REPORT OF THE SPILLS REGULATION ADVISORY PANEL

A REVIEW OF THE 1985 DRAFT REGULATION RELATING TO PART IX OF THE ENVIRONMENTAL PROTECTION ACT

OCTOBER 1985

Ontario

Ministry of the Environment

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October 11, 1985.

The Honourable Jim Bradley, M.P.P.
Minister of the Environment
135 St. Clair Avenue West
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Dear Minister :

This is to transmit to you the final report of the Spills Regulation Advisory Panel appointed by you on July 25, 1985 to conduct an immediate review of the 1985 Draft Regulation relating to Part IX of the Environmental Protection Act.

We feel privileged to have participated in the implementation of this important legislation and we thank you for your confidence.

Respectfully submitted,

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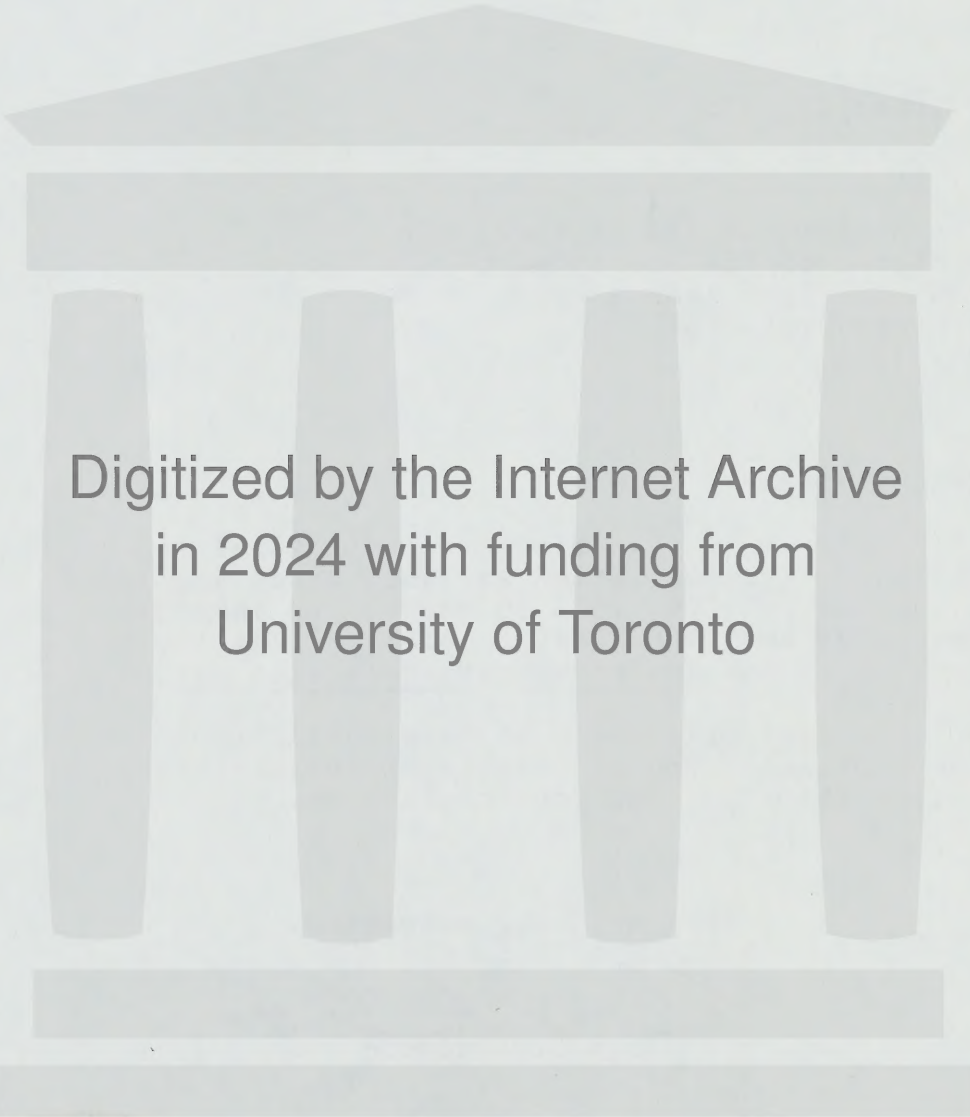

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A. INTRODUCTION

Background

In July 1985, the Government of Ontario issued a proclamation naming November 29, 1985 as the day on which Part IX of the Environmental Protection Act R.S.O. 1980, c.141, as amended, comes into force. Part IX, passed by the Ontario Legislature in 1979, requires the immediate reporting and remedying of spills of pollutants into the environment. It further provides for compensation for damages, losses, costs and expenses arising from spills and their clean-up.

To make Part IX fully operative, a draft regulation was first circulated for comment in 1982, to take effect in conjunction with the coming into force of Part IX. To this end, the Honourable Jim Bradley, Minister of the Environment, on July 25, 1985 appointed a three-member Spills Regulation Advisory Panel to conduct an immediate review of the July, 1985 Draft Regulation. The Panel, consisting of Professor John G.W. Manzig (Chairman), Janette MacDonald and Peter Armour, was to receive representations from the public and report to the Minister on whether any changes should be made to the Draft Regulation.

Terms of Reference

The Spills Regulation Advisory Panel was established by the Minister of the Environment with the following terms of reference:

I. To obtain the public's views on the proposed Regulation to be established in support of Part IX of the Environmental Protection Act; and

II. To make recommendations to the Minister on amendments to the proposed Regulation by August 31, 1985.

The Panel was requested to obtain the public's advice on the following specific subjects:

I. The conditions which must be met in order to obtain compensation from the Crown under sections 89 or 91 of the Act.
II. The amounts of compensation which may be payable.
III. The exemptions for certain types of spills.
IV. The limit of liability prescribed for farmers and the qualifications for enjoying the benefits of the limit.
V. The conditions which must be met by insurers to exercise their rights of subrogation.
VI. Any other matters which the Act authorizes to be dealt with by regulation in relation to Part IX of the Act.

Public Consultation Procedures

To meet the Minister's requirements for obtaining the public's views on the Draft Regulation, meeting notices were placed in 28 English and French daily and weekly newspapers throughout Ontario. Newspaper, radio and television media were contacted to publicize the Panel meetings and to request oral and written submissions from the public.

Simultaneously, the Ministry sent out copies of a notice of meetings, the July, 1985 Draft Regulation and summary thereof (attached as Appendices B and C respectively) to approximately 2000 individuals and agricultural, business, environmental, industrial, municipal and other bodies and organizations.

The Panel held public meetings from August 12 to August 27, 1985 in the following cities:

Toronto	Chatham
St. Catharines	Kingston
Thunder Bay	Sudbury

(schedule attached as Appendix B)

The Panel received 55 oral and written submissions during its nine days of public meetings. It also received 17 additional written submissions by mail during August 1985 (list of submissions attached as Appendix D). The briefs received ranged from one page letters to substantial presentations from individuals and industrial, agricultural, insurance, environmental and municipal organizations.

The written and oral submissions received by the Panel presented a spectrum of views on the issues within the Panel's terms of reference and were most helpful in providing a basis for the Panel's deliberations and the recommendations made in this report.

B. EXECUTIVE SUMMARY

- In response to a constantly recurring theme in the great majority of submissions from the public and as an indication of the Panel's own strong consensus, the underlying objectives of many of our recommendations are:

  . clarification and simplification of procedures for applicants for compensation under Sections 89 and 91 and for insurers operating in co-operation with the Crown

  . greater comprehensibility generally, of the Regulation so that its usefulness will extend beyond its authors and a few others thoroughly familiar with it

  . the introduction of a general principle of fairness and reasonableness into those phases of the administrative procedures in the Regulation where that principle is perceived to be presently lacking

I. CONDITIONS FOR COMPENSATION

Section 89: Recipients of Orders and Directions

- For persons applying under Section 89, the Panel has recommended:

  . where possible the recipient should be treated the same way as any other person providing a service to the Crown

  . where application through Section 89 is necessary, disclosure obligations be less detailed and proof of amount be simplified

  . the time limit for application be extended to eighteen months, and measured from the time of incurring the cost or expense

Section 91: Spill Creditors and Owners or Persons in Control of Pollutant

- For Section 91 applicants, there should be a delineation between spill creditors on the one hand and owners or controllers of spilled pollutants on the other, so that relevant conditions can be allocated to each for greater clarity

- Section 91 spill creditors and owners or controllers should have a less detailed disclosure obligation in making application to the Environmental Compensation Corporation (E.C.C.)

- The obligation of the spill creditor or the owner or controller of the spilled pollutant to pursue court actions against others to final judgment or settlement before applying to E.C.C. should be subject to the joint discretion of E.C.C and the applicant

- The proposal required of E.C.C. in Sec. 94 of the Act should be given to the applicant within 60 days of the applicant's proof of loss to the Corporation

- Payment should be made to the applicant within 30 days of applicant's acceptance of the proposal

Spill Creditor

- The two week interim notice period for spill creditor applicants should be extended to 90 days

Owner Or Person In Control

- If an owner or controller of spilled pollutants is liable for the spill at common law, he should not have access to E.C.C.

II. AMOUNTS OF COMPENSATION

Section 89 Recipients of Orders and Directions

- Procedures used in determination of the applicable amount should be simplified

Section 91 Applicants (Spill Creditors)

- The limit for payment to a spill creditor under regulation 10(2) should be amended to be the lesser of
  - i) the amount of judgment or settlement (with E.C.C. consent) or
  - ii) $500,000 inclusive of bodily injury or other loss
- in determination of the amount of the spill creditor's claim, the procedure should be simplified

Section 91 Applicants (Owner or Person in Control)

- In the calculation of the E.C.C. amount the formula should encourage persons to maximize their own underlying insurance coverage, in contrast to the current draft in which the limit on the amount payable by E.C.C. is reduced to the detriment of the prudent insured carrying high limits
- Businesses operating both in Ontario and elsewhere should not have their available E.C.C. coverage reduced by the factor of their operations elsewhere
- In determination of the specified deductible,

  a) a more workable classification should be defined as follows:

Class I	Individuals, non-profit organizations and small municipalities and corporations
Class II	Medium municipalities and corporations.
Class III	Large municipalities and corporations.

b) recognition should be given to the coincidence of the proclamation of Part IX with the severe market crisis in the insurance business throughout the world. Therefore, the deductible should be initiated at the lowest reasonable levels, incrementing over three years to a minimum of $500,000 for Class I and higher for others, so that insurers can fill the underlying layer progressively as their capacity returns (see attached table).

III. EXEMPTIONS

The Panel generally supports the exemptions set out in s.15 to 19; however, it is recommended, in light of submissions made that the particular exemptions found in s.15, based upon the existence of approvals/certificates, etc. should be reviewed to ensure that the basis upon which the specified approvals/certificates etc. are issued are consistent with the general purpose and intent of Part IX of the Act.

IV. THE LIMITS FOR FARMERS AND THE QUALIFICATIONS THEREFOR

- The $500,000 limit in the current draft should not be changed

- A farmer who is engaged in, and has incurred liability under Part IX of the Act arising out of the production of an agricultural product on a farm, whether for himself or others, should be eligible for this limit, except that a custom farming operator whose principal source of income is from such custom work should not be eligible for the farmer's limit of liability, while engaged in such custom work.

V. CONDITIONS FOR INSURERS' SUBROGATION

- In the area of common interest between the Crown, E.C.C. and insurers, the obligation of the insurer to operate under the instructions of the Crown should be replaced by a condition which requires the insurer to protect the interests of both in the absence of conflict of interest.

TABLE TO EXECUTIVE SUMMARY

SPECIFIED DEDUCTIBLES

	1985-6	1987	1988
Class I	200,000	300,000	500,000
Class II	500,000	750,000	1,000,000
Class III	1,000,000	2,000,000	5,000,000

CLASSES

CLASS I - Individuals, non-profit organizations and small municipalities and corporations

CLASS II - Medium municipalities and corporations

CLASS III - Large municipalities and corporations

C. GENERAL INTRODUCTORY COMMENT

The authors of the 1982 Draft Regulation were faced with the difficult task of delineating the parameters of the subject matter of the Regulation for the purpose of implementing Part IX of the Environmental Protection Act (the Act) and defining the new relationship between the public, their insurers, the Crown and the Environmental Compensation Corporation (the Corporation or E.C.C). The Panel has found the Draft Regulation helpful in demonstrating the number of factors which must be considered in the implementation of this legislation.

However, since a major thrust of the legislation is the creation of a compensation scheme, the Panel has been concerned with the almost unanimous comment in the submissions regarding the complexity and rigidity of procedures, and lack of clarity in the text of the Draft Regulation. This legislation and its Regulation has had a high profile in the public's mind because of its potentially far reaching implications. It is important, therefore, that the Regulation should be readily comprehensible and useful to the public at large, thereby accomplishing the purpose and intent of the legislation.

An underlying objective of many of our recommendations is the introduction of simplification and flexibilty of procedures so that the legislation in its practical application can achieve its social objectives.

We recognize that a more simplified Regulation may open it to abuse by a small segment of the public who might attempt to circumvent some of its objectives. However, we believe that only when such abuse reaches a level which thwarts the interest of the public, should this problem be addressed by appropriate amendment to the Regulation.

D. RESPONSE TO SPECIFIC TERMS OF REFERENCE

I. THE CONDITIONS WHICH MUST BE MET IN ORDER TO OBTAIN COMPENSATION FROM THE CROWN OR ENVIRONMENTAL COMPENSATION CORPORATION UNDER SECTIONS 89 AND 91 OF THE ACT.

The Panel proposes to make its recommendations in relation to this term of reference in four parts:

1. Conditions for Section 89 applicants (i.e. receivers of orders or directions),

2. Conditions for Section 91 applicants who are the owners or persons in control of spilled pollutant,

3. Conditions for Section 91 applicants who are spill creditors (i.e. persons suffering losses or damages), and

4. Matters pertaining to all applicants for compensation.

1. Conditions For Section 89 Applicants (i.e. Receivers of Orders or Directions)

a) General Comment

The Panel has received many submissions with reference to the power of the Ministry of the Environment to give directions or orders, in addition to its right to obtain contractual services, to be able to respond to a spill. Generally, the submissions have urged that Part I of the Draft Regulation be amended in order that recipients of such orders or directions be promptly and fairly compensated without their right to compensation being jeopardized as a result of a failure to comply with any unduly complicated or onerous condition. In other words, it was suggested to the Panel that the applicant should at least be compensated in the same way as any other party providing services to the government.

In light of these submissions it is the Panel's recommendation that Part I of the Draft Regulation be amended to meet these concerns.

b) Applicant's Eligibility

The Act by s.89(1) and (2) establishes who is, and who is not entitled to apply for compensation for the cost and expense incurred in complying with an order or direction. In the event that such a person, who is potentially entitled to be commpensated, otherwise settles his claim without the written consent of Her Majesty in Right of Ontario, that person should not be entitled to be an applicant for compensation.

#1. Recommendation: That potential applicants who settle without the written consent of the Crown should not be eligible to apply for compensation.

c) Disclosure Obligations

The Draft Regulation has been widely criticized as being unnecessarily detailed. It was suggested that instead of the provisions found in s.2.1 C.& D, and s.2.3.& 4., it should only be necessary for the applicant to provide such information as may be reasonably available and reasonably required to substantiate a claim. This should include the completion of a form with information reasonably relevant to the claim and the provision of a copy of the written order or direction.

In this context, the Panel notes that the Act does not require directions to be given in writing. Provision should be made in the Regulation to require directions, once issued, to be confirmed in writing, as soon as possible, by the Ministry.

Some submissions suggested that consideration should be given to including a provision to protect confidential information (medical and business) if disclosed pursuant to a general disclosure obligation.

#2. Recommendation: That disclosure requirements be limited to a general obligation to disclose what is reasonably available and reasonably required to substantiate the claim. Thus s.2.1.C.& D and s.2. 3. & 4 of the Draft Regulation should be deleted.

d) Compliance with Orders or Directions

A number of submissions addressed their concern, regarding the condition found in s.2.5 that the applicant must "... have followed every lawful order and direction that relates to the applicant ..." made under specified statutes, in order to be entitled to compensation.

The Panel suggests that this provision could more expressly state that an order or direction is not to be used as a license to ignore existing orders and directions. In other words, when an applicant is following such orders or directions, unless they expressly state to the contrary, the applicant should be obliged to make reasonable efforts to comply with all other orders and directions made under the Act, the Water Resources Act, or the Pesticides Act which apply to the applicant.

#3. Recommendation: That the condition of compliance with other orders and directions applicable to the applicant be clarified.

e) Obligations Relating to Court Actions

In the event an applicant chooses to bring a court action against a third party for his costs and expenses, it was suggested to the Panel that s.2.6.B. should be amended to limit the obligation to join everyone liable in the court action to a requirement that only those persons which the applicant reasonably believes to be liable for the applicant's costs and expenses would have to be included in such court action.

#4. Recommendation: That the applicant be required to include in any court action only those parties whom the applicant reasonably believes to be liable.

f) Time Limits

Section 2.2.A provides that applications for compensation must be made within one year from the day that the order or direction was made or given. Some submissions pointed out that the application time period appears to presume that the work ordered or directed can in each and every case be completed within one year of the date of the order or direction. In some cases the period of one year may be insufficient time for an applicant to make a claim.

In order to meet these concerns s.2.2.A could be amended to refer to eighteen months instead of one year and the closing phrase of s.2.2 could be "from the date when the person incurred the cost or expense in respect of carrying out or attempting to carry out an order or direction". This wording is consistent with s.87(13) of the Act which establishes the limitation periods for compensation for such costs and expenses.

Further, some submissions also recommended that s.2.2.B be retained in order to give Her Majesty in Right of Ontario discretion to extend the period in which an application for compensation may be made.

#5. Recommendation: That the time limit for applying for compensation be extended to eighteen months, while retaining the Crown's discretion to extend the time, and that s.2.2 be amended to reflect the wording found in the Act.

In the context of time limits, the Panel considered whether the Crown should be obliged to make payment to an applicant within 30 days of fully substantiating the claim under the Regulation. At present, the Act and the Draft Regulation do not appear to establish a time limit by which payment is to be made by the Crown.

#6. Recommendation: That a 30 day time limit be established for payment by the Crown to an applicant under s.89 of the Act.

g) Assignment of Applicant's Right of Action

In its review of s.2.6.C which requires the applicant to assign any judgment for costs and expenses, the Panel considers that this section may be superfluous in light of ss.89(4) and (5) of the Act.

#7. Recommendation: That s.2.6.C be deleted as subrogation rights are already given in the Act, and this assignment provision does not appear to be required.

h) Public Authority and Statutory Duty

On review of s.2.9 it was the Panel's opinion that ambiguities may arise in the application of this section. However, the concept of not providing compensation to a municipality which incurs costs for meeting its statutory duties appears appropriate. The comments received by the Panel indicate that the municipalities had no concern on this point.

2. Conditions for Section 91 Applicants Who are the Owners or Persons in Control of a Spilled Pollutant

a) General Comment

Many of the oral and written submissions received by the Panel addressed themselves to the question of whether:

- access to compensation from E.C.C. should be available to those parties at fault at common law,
- the procedures for obtaining compensation could be simplified to avoid unnecessary litigation and retain only those conditions that are reasonably necessary for the purpose of establishing legitimate claims.

In answer to these concerns the Panel would recommend that consideration be given to limiting the right to compensation from the Corporation to only those owners and controllers of a spilled pollutant who are otherwise not liable at common law. The Panel also has suggestions for simplifying the process of applying for compensation.

b) Applicant's Eligibility

Section 91(1)(c) of the Act and s.4(1) 4.& 5 of the Draft Regulation establish that only those owners and persons in control who are liable to pay compensation pursuant to Part IX of the Act may be eligible for compensation. Consideration could be given to deleting s.7.3 in the Draft Regulation since it appears to repeat this qualification for applicants.

Save for the ambiguities created by s.6.1, the present Draft Regulation appears to permit all owners or persons in control of a spilled pollutant to be eligible applicants regardless of whether they would otherwise be liable for the spill at common law or other statutory law. The Panel, in light of the considerations set out below, would propose that only those owners or controllers who would not otherwise be liable at common law for the spill, should have the right to apply for compensation from E.C.C.

The Panel believes this proposal furthers its desire to increase the clarity and equity of the Draft Regulation as:

- Section 8(5) appears to try to limit the applicants rights to compensation to that "additional" liability imposed by Part IX of the Act. It was submitted to the Panel that this could not be easily determined in the case where common law liability otherwise existed and would be the subject of much litigation,

- The E.C.C. should find the determination of "additional" liability greatly simplified if those otherwise liable at common law do not qualify for compensasation, and

- The Panel repeatedly received submissions stating that those "with fault" should not have access to E.C.C. compensation.

#8. Recommendation: That only those owners or persons in control of a spilled pollutant who are not otherwise liable at common law should qualify as applicants for compensation.

Further, the Panel received submissions that the excluded classes found in s.4(2)(a),(b),(c) of the Draft Regulation should be amended to include as well as Her Majesty in Right of Canada, Her Majesty in Right of all of the Provinces, as the payment of funds from one governmental body (E.C.C.) to another appeared circular. Other Non-Canadian governmental authorities should also be excluded.

#9. Recommendation: That the owners and controllers excluded from the right to E.C.C. compensation be extended to Her Majesty in the Right of all of the Provinces and any other Non-Canadian governmental authority.

For the purposes of excluding non-residents from being eligible applicants (s.4(2)(e)) it was suggested to and accepted by the Panel that only those corporations which do not have a place of business within the Province of Ontario should be excluded and that the qualification of non-resident exemption in the case where legislative reciprocity exists be retained (see Recommendation #18) for owners and controllers, in order to foster the development of future reciprocal legislation in other jurisdictions.

The Panel suggests that s.6.2 and s.6.3 be retained subject to the comments in Appendix A in which the Panel recommends that s.6.2 be made consistent with the reciprocity provisions found in s.4(2)(e).

#10. Recommendation: That owners or persons in control who are not residents of Ontario be excluded from the right to E.C.C. compensation unless reciprocal legislation exists in their jurisdicton of residence in accordance with the concept presently found in s.4(2)(e) of the Draft Regulation.

The Panel considered the conditions presently contained in the Draft Regulation which exclude those persons who fail to meet the solvency tests (s.7.5).

It is the Panel's understanding that the solvency test in s.7.5 is for the purpose of ensuring that any funds paid by E.C.C. are to be for the benefit of those entitled to compensation for losses, damages, costs and expenses under the Act and Draft Regulation, and not all creditors of an insolvent person.

Also, when determining solvency and in light of the Panel's Recommendation #37 on "assets", the Panel suggests that the concept of "the family of corporations" be deleted from s.7.5.A.,B.& C.

#11. Recommendation: That when considering an applicant's eligibility, the condition relating to solvency of the applicant owner or controller of the spilled pollutant in s.7.5 should also be retained.

c) Disclosure Obligations

A concern was expressed by the public that the present information and access requirements are exceptionally broad and possibly unnecessary for the establishment of all reasonable claims, along with the suggestion that all that is really necessary is a general obligation requiring all applicants to provide such information as may be reasonably available and reasonably required to substantiate the applicant's claim. This could include the completion of the form referred to in s.5.1.A with information reasonably relevant to the claim and would permit the deletion of s.5.1.B & C, and s.5.2.& 3.

The Panel also notes that some submissions suggested that there was a need to provide, in the Regulation, protection for confidential information (medical or business), if disclosed pursuant to this general obligation to substantiate a claim.

#12. Recommendation: That disclosure requirements of the owner and person in control of the pollutant be limited to a general obligation to disclose what is reasonably available and reasonably required to substantiate a claim. Thus s.5.1.B & C, and s.5.2. & 3. can be deleted.

d) Obligations relating to Court Actions

In keeping with the concept that E.C.C. is to provide a safety net for those owners and controllers who have incurred liability pursuant to Part IX in excess of the specified deductible, it is the Panel's view that the requirements set out in s.7.1. & 4 requiring pursuit of an action to final judgment and the use of all remedies to obtain payment, may be unduly restrictive and onerous.

It was suggested that the applicant should only be obligated to take reasonable steps to finally determine liability and to proceed with due diligence to obtain payment of funds owing to the applicant in respect of the claim before being entitled to apply to E.C.C. for compensation. It would then be possible to replace s.3(1)(g) and s.7.1 & 4 with this general obligation, and thereby remove what appears to be an unnecessarily rigid and detailed requirement.

Further, in light of some of the examples provided to the Panel by the public, the Panel considered whether E.C.C. should be given the discretion to waive this general obligation upon formal written request of the applicant, where the merits do not justify the continuation of an action.

In Part D VI of this report, the Panel discusses the need to give E.C.C. the discretionary power and the basis on which such power is to be exercised.

#13. Recommendation: **That the applicant need only have a general obligation to take reasonable steps to finally determine liability and to proceed with due diligence to obtain payment of funds owing to it in relation to the applicant's claim. Further that E.C.C. be given the discretionary power to waive the above obligation upon request of the applicant.**

e) Time Limits

The Panel has not received any comments on the time limits for submitting a claim under s.7.2. The Panel's only suggestion would be to add a reference to the date of E.C.C.'s waiver to recognize the discretionary power that may be given to E.C.C. pursuant to Recommendation #13 relating to the applicant's obligation to take court actions.

#14. Recommendation: **That the time limit for applying for compensation be amended to recognize waivers that may be given by E.C.C. as set out in Recommendation #13.**

It is also the Panel's recommendation that an express provision be included in the Regulation requiring payment by the Crown of an established claim within 30 days of the applicant's acceptance of the proposal under s.94(1) of the Act. It may also be possible to impose an obligation on E.C.C. to proceed with diligence to present the proposal to the applicant within 60 days of the applicant's proof of loss to E.C.C.

#15. Recommendation: **That a time limit of 60 days be established by which E.C.C. must make a proposal for compensation and upon acceptance of such proposal by the applicant, a time limit of 30 days be established for payment by the Crown to the applicant under s.91 of the Act.**

3. Conditions for Section 91 Applicants who are Spill Creditors

a) General Comment

Sections 9 and 10 of the Draft Regulation permits a spill creditor to be compensated in the following cases:

- when the spill creditor's claim is below a specified amount (presently fixed at $10,000),
- when the spill creditor is applying for a limited interim payment only (presently $10,000 plus 10% of the total claim),
- when the spill creditor decides to prosecute his claim on his own by action in the courts with the intention of collecting from E.C.C. should any resulting judgement turn out to be uncollectible, or
- when the spill creditor collects the interim payment and pursues in a court action the collection of the balance.

In general, the substance of the conditions to be met by a spill creditor to become entitled to compensation payments from the Corporation did not receive as much critical comment from the public as the format, style of drafting and particularly the clarity of the provisons imposing the conditions. It was suggested by several submissions that the language and structure of ss.9 & 10 of the Draft Regulation was extremely difficult to comprehend and if enacted as now written would require many applicants to go to the unnecessary expense of obtaining legal counsel in order to file even the simplest application for compensation with the Corporation.

The Panel would recommend where the claims conditions set out in ss.9 & 10 differ with the nature of the claim being made that the alternative claims conditions be more clearly identified.

#16. Recommendation: That for each of the four cases of spill creditor applications in ss.9 & 10 of the Draft Regulation, the relevant claims conditions be clearly identified.

b) Applicant's Eligibility

The Draft Regulation, after prescribing under s.4(1)1., .2 & .3 the classes of persons who may be spill creditors for the purposes of s.91 of the Act, excludes in s.4(2)(a) to (c) among others, Her Majesty in the right of Canada, Her agencies, boards, commissions and Crown corporations.

As discussed for Recommendation #9, the Panel received submissions suggesting that there is little justification for not excluding similarily the Crown in right of Ontario, to prevent a circular movement of funds between the various parts of the Provincial Government. The Panel supports the reasons underlying the above suggestion and would apply it also to the class of applicants who are spill creditors; thus Recommendation #9 extending the exclusion of s.4(2)(a)to (c) to the Crown in the Right of all of the Provinces and any other non-Canadian governmental authority should also be applied to spill creditors.

#17. Recommendation: That Recommendation #9 extending the exclusion in s.4(2)(a)-(c) to the Crown in the Right of all Provinces and any other non-Canadian governmental authority be also applicable to potential spill creditors.

A further exclusion is introduced in s.4(2)(e) of the Draft Regulation whereby a person ordinarily resident outside Ontario is outside the prescribed class of spill creditors, unless that person can show that the jurisdiction of his ordinary residence has legislation substantially similar to Part IX of the Act and provides for reciprocal treatment of Ontario residents.

A number of submissions were critical of this reciprocity provision, because it is said to be discriminatory by denying the financial protection of Part IX of the Act to other Canadian residents and to all visitors to Ontario. It was also submitted that the disentitlement to compensation might result in a negative reaction from the owners and operators of out-of-province road transport vehicles.

The Panel carefully considered these submissions, but does not recommend the deletion of the reciprocity concept in s.4(2)(e) of the Draft Regulation for the following reasons:

- Firstly, such reciprocity provisions have been part of the law of Ontario and of other jurisdictions for a number of years, and generally, appear to have met with public acceptance .

- Secondly, there was no apparent evidence that would support the contention that out-of-province owners would respond negatively to the reciprocity provisions to the detriment of other Ontario highway users.

- Finally, it appears desirable that other jurisdictions enact environmental compensation legislation similar to Part IX of the Ontario Act; the reciprocity provision clearly encourages such a development.

Subject to the comment in Appendix A relating to the consistency of wording in s.4(2)(e) and ss.6.2 and 6.3, the Panel would support the retention of the exclusion and reciprocity provision for spill creditors.

#18. Recommendation: That the spill creditor who is not a resident of Ontario be excluded from the right to E.C.C. compensation unless receiprocal legislation exists in their jurisdiction of residence in accordance with the concept presently found in s.4(2)(e) of the Draft Regulation.

c) Disclosure Obligations

The discussion for Recommendation #12 with reference to the extent of the disclosure requirements as they relate to the owner and person in control of the spilled pollutant are equally applicable to the spill creditor. In fact, the need to simplify, clarify and to make the disclosure provisions less onerous may be even greater in the case of the spill creditor, in light of what presently exists in ss.5, 9 and 10 of the Draft Regulation. This view is reflected in the submissions that were highly critical of the rigid proof requirements.

The obligation imposed in s.5.1.A to fill in the application form provided by the Corporation provides E.C.C. with full opportunities to specify the extent to which relevant supporting evidence, including medical examinations and records are required and to adapt such requirement to the nature of individual claims. The resulting flexibility should simplify applications for the spill creditor by restricting the "proof requirements" to that which is relevent, reasonably available and reasonably required to establish the claim and at the same time, save administrative cost for the Corporation.

#19. Recommendation: That the disclosure requirements of the spill creditor be limited to a general obligation to disclose what is reasonably available and reasonably required to substantiate a claim. Thus, s.5.1.B & C, and s.5.2. & 3 can be deleted along with s.9.3(iv)B, s.9.6(ii) and s.9.8.

d) Obligations relating to Court Actions

The general thrust of the comment and Recommendation #13 relating to the obligations of owners and controllers of spilled pollutants with regard to court actions, is to some degree also applicable to spill creditors in determining their 'losses and damages'. A similar general obligation to take reasonable steps to finally determine losses and damages, and to proceed with due diligence to obtain compensation therefor should apply to spill creditors.

To the extent that the Draft Regulation has, indeed, modified the "payor of last resort" or "financial safety net" function of the Corporation with regard to spill creditors, procedural simplification and a reduction of the extent of a spill creditor's obligation as it relates to court actions appears to be even more essential.

With regard to the spill creditor who suffered losses or injury amounting to less than $10,000, the requirement in s.9(2)(i) that "every person liable" be notified should be modified so that an applicant does not have to retain legal counsel to make a determination as to who is potentially legally liable for the spill.

For the spill creditor whose claim exceeds $10,000 and who wishes to apply to the Corporation for an interim payment of $10,000 and 10% of the balance of his claim under s.9.4 the above notice requirement under s.9.2(i) appears reasonable; however, this notification requirement need include only those whom the spill creditor reasonably believes to be liable. Thus the last phrase of s.9.2(i) commencing with "but" can be deleted.

The requirement under s.9.3(i) that an action be commenced "...against all persons liable to the applicant in respect of the spill..." should be amended to limit the obligation to commence actions only against those who the spill creditor reasonably believes to be liable. Thus, the last phrase in s.9.3(i) commencing with "...whose identity ..." may be deleted.

Further, at the request of the applicant, this requirement should be subject to E.C.C. discretion, so that it can be waived in the same manner as E.C.C. can waive the owner's and controller's obligation as set out in Recommendation #13.

For those spill creditors who wish to file a claim for an interim payment or who decide to pursue their legal remedies in the courts without first applying for such payment from the Corporation, the same discretionary power should be given to the E.C.C. to waive the requirement under s.9.3(iii) that such spill creditor "...prosecute the action or actions to final judgement or dismissal...".

#20. Recommendation: That the notice requirement under s.9.2(i) with reference to the applicant whose claim is for less than $10,000 be amended in such a way that an applicant does not have to retain legal counsel to make a determination as to who is potentially legally liable for the spill and that the notice requirement for other applicants who are spill creditors be amended to incorporate a "standard of reasonableness" in its application.

Further, that at the request of the applicant E.C.C. be given the discretionary power to waive the spill creditor's general obligation to take reasonable steps to finally determine losses and damages, and to proceed with due diligence to obtain compensation, on the same basis as it would exercise the similar discretion for owners and controllers of spilled pollutants as set out in Recommendation #13.

e) Time Limits :

Submissions were received that commented critically on the shortness of the interim notice period of two weeks in s.9(10) of the Draft Regulation. Even though the Corporation is given the discretionary power to waive the notice requirement if it is of the opinion that its ability to assess the loss or damage has not been prejudicial the Panel sees considerable merit in the suggestion that, for reasons of equity, the interim notice period for spill creditors be substantially extended.

A change in the interim notice period seems to be justified in light of the submission that people who suffer losses as a result of a spill will not be immediately aware of Part IX and the Regulation and the requirement for the giving of notice.

The Panel would therefore recommend that the interim notice period be extended to 90 days, while maintaining the discretionary power of the Corporation to grant a waiver from the condition of the notice in appropriate cases.

#21. Recommendation: That s.9(10) be amended to provide an interim notice period of 90 days during which the spill creditor must give interim notice of his loss or damage.

With reference to Recommendation #15 with regard to the introduction into the Regulation of a provision requiring the Crown to pay an established claim within 30 days of the applicant's acceptance of the proposal under s.94(1) of the Act, the Panel would suggest that the equitable considerations underlying that recommendation apply equally to the time period during which spill creditors should be entitled to expect payment of their compensation claims.

Equally, the Panel concluded that consideration should be given to oblige ECC to proceed with due diligence and to present the proposal under s.94 of the Act to the applicant spill creditor within 60 days of proof of loss.

#22. Recommendation: **That a time limit of 60 days be established by which E.C.C. must make a proposal for compensation to the spill creditor applicant under s.94 of the Act and that upon acceptance of such proposal, a time limit of 30 days be established for payment to such spill creditor applicant by the Crown.**

In light of the recommendation that the Corporation be given discretionary powers to waive the applicant's obligations under s.9.3 with regard to court actions, it appears necessary that an appropriate amendment be made to s.9.11.B which now provides for a one year application period after final judgment or settlement of the action.

#23. Recommendation: **That the time limit for applying for compensation in s.9.11.B be amended to recognize waivers that may be given by E.C.C. as recommended above.**

4. Matters pertaining to all Applicants for Compensation

There are provisions dealing with misrepresentation made by applicants for compensation under s.91 of the Act in Part II of the Draft Regulation (ss.5.4 and 12.2). If such provisions are considered necessary, they should be made applicable to all applicants under s.89 and 91 of the Act so that there is a general prohibition against applicants knowingly or recklessly misrepresenting or omitting any information in any application or proceeding in respect of an application for compensation from the Crown or the Corporation.

Further, as set out in Recommendation #1 relating to receivers of orders or directions, it is the Panel's view that spill creditors and owners or persons in control of a spilled pollutant should not be entitled to be applicants for compensation if they have settled their claims without the prior written consent of E.C.C. (s.5.5).

#24. Recommendation: That s.5.4 and s.12.2 dealing with misrepresentations be made applicable to all applicants for compensation from the Crown or E.C.C. and that the condition that applicants for compensation must not settle their claims without the written consent of the Crown (s.2.6.A) or E.C.C. (s.5.5) be retained.

II. THE AMOUNTSOF COMPENSATION PAYABLE UNDER SECTIONS 89 AND 91 OF THE ACT

The Panel proposes to make its recommendations in reference to this term of reference in four parts.

1. A general principle,
2. Section 89 amounts of compensation for receivers of orders or directions,
3. Section 91 amounts of compensation for owners or persons in control of the spilled pollutant, and
4. Section 91 amounts of compensation for spill creditors (i.e. persons suffering losses or damages).

1. General Principle that Applicant not to Receive Double Payment

Upon review of Part I and Part II of the Draft Regulation consideration was given to the insertion of a general provision in the Regulation that any applicant under s.89 or s.91 of the Act:

- should exclude from the application any amount for which the applicant has already received compensation from other sources and,

- should repay to the Crown any amount received from others after payment by the Crown of costs and expenses, losses and damages to the extent that the payment from others was for such compensation.

#25. Recommendation: That the applicant should not include any amount for which the applicant has already received compensation from others and further that any subsequent recovery from others should be repaid to the Crown.

2. Section 89 Amounts of Compensation for Receivers of Orders or Directions

a) General Comment

It was suggested to the Panel that the amount to be paid by the Crown to an applicant should be sufficient to fully compensate the recipient of the order or direction for its costs and expenses incurred and that the Regulation be drafted in a manner which would not alarm the recipient of an order or direction because the process for compensation from the Crown is perceived by the public to be cumbersome and subject to potentially unreasonable conditions.

b) Amount of Compensation

It is the Panel's conclusion that the compensation to be paid to the applicantshould fully reimburse the applicant for all of the costs and expenses incurred in complying with the order or direction. The reimbursement should take into consideration the level of expertise possessed by the applicant and the conditions under which decisions and actions must be taken. Thus the applicant's reimbursement from the Crown for costs and expenses should not be limited, other than for the applicant's gross negligence or patent unreasonableness.

#26. Recommendation: That compensation paid to recipients of orders or directions should be for all costs and expenses save those that are patently unreasonable or incurred due to the gross negligence of the applicant.

c) Deductions

It is the Panel's suggestion that if the recommendation for a general obligation to only claim for those amounts that the applicant has not been compensated for and to repay subsequent recoveries from others, is adopted, the need for the detailed and ambiguous provisions found in s.2.7.B.& C. and the closing phrase, would disappear. The provision as presently drafted could complicate the administration of this part of the Draft Regulation and add unnecessary uncertainties to the determination of the amount of compensation.

#27. Recommendation: That s.2.7.B. & C. and the closing phrase after the words "... not obligated to repay..." be deleted to avoid uncertainty in application.

d) Settlements and Judgments

The Panel examined whether the principle contained in s.2.8.A. should be retained in order that the amount of the applicant's right to compensation would not exceed the amount obtained in a judgment.

The Panel also addressed itself to the question of whether the applicant with the Crown's written consent could settle its claim with a third party without prejudicing its rights to be compensated for the balance of its costs and expenses from the Crown. The Panel concludes that the condition found in the s.2.8.B. of the Draft Regulation may result in forcing an applicant to abandon negotiations that may lead to partial settlement only, in order to preserve the right to total compensation from the Crown, resulting in a net loss to the Crown.

#28. Recommendation: That judgments should determine the ultimate amount collectible by an applicant and settlements should be permissible with the written consent of the Crown without prejudicing the applicant's right to claim the remainder from the Crown.

3. Section 91 Amounts of Compensation for Owners or Persons in Control of a Spilled Pollutant

a) General Comment

Many concerns were expressed regarding the complicated concepts contained in Part II of the Draft Regulation, the resolution of which may be the potential subject of many court actions. The view was expressed that as a result of this concern few, if any, would receive the benefits originally intended by the creation of the Corporation. These concerns were addressed against the back-ground of an unprecedented world-wide disruption in the private insurance business as noted in Part V of this report.

The Panel after much deliberation and with the hope of achieving greater simplicity and overall equity concluded that for the owner or person in control of a spilled pollutant, the formula contained in the present s.8(1) "Firstly" remain in many respects the same, but that:

- the amount of "total liability" to be considered be more cleary defined,
- the specified deductible be changed, and
- the computation of the maximum amount payable in "B" be changed to take into consideration the amount of the applicant's applicable insurance coverage.

It is also recommended that the computation relating to the extra-provincial assets of a business as set out in s.8(1) "Secondly" be deleted so that persons carrying on business both in Ontario and elsewhere should not have their right to compensation reduced by the factor of their operations elsewhere.

b) Payment Formula

Submissions were received recommending that the formula in s.8(1) be changed by deleting all of the provisions after the word "Secondly" to eliminate its limiting effect on businesses located in Ontario, but also carrying on business outside the Province to compensation from E.C.C. The application of such a ratio for extra-provincial assets seems to unreasonably and unnecessarily complicate the formula.

The Panel also considered adding to the equation found in s.8(1) "Firstly" B. the amount of the insurance coverage the applicant has applicable to the liability arising from a spill. By adding in the "applicable insurance" in "B" the person who insures for an amount in excess of the specified deductible is not at a disadvantage when determining the maximum amount payable by E.C.C., thus removing what might have otherwise appeared to be a disincentive for insuring when the greater of the specified deductible or applicable insurance is deducted from the calculation found in s.8(1)"A".

#29. Recommendation: That the compensation formula remain essentially the same with the exception of taking into account "the applicable insurance" in the computation of the maximum amount payable found in s.8(1)"Firstly" B. and deleting the computation relating to extra-provincial assets.

c) "Total Liability"

Section 8(1) of the Draft Regulation establishes a formula for determining the amount of compensation that may be authorized for payment by E.C.C. to an owner and controller of a spilled pollutant.

In defining terms contained in the formula, the meaning of "the total liability of the applicant" should include all those liabilities and costs and expenses of the owner or person in control of the spilled pollutant which have arisen as a result of Part IX of the Act, provided the owner or controller is not otherwise liable at common law for the spill incident (see Comment and Recommendation #8.)

This would eliminate to a large degree the ambiguity in determining the amount referred to in s.8(5) which requires the E.C.C. to determine the much debated question of what constitutes the additional liabilities, costs and expenses imposed on the owner or controller by Part IX of the Act, when the owner or person in control is also liable at common law. This condition in the Draft Regulation has been called "a recipe for endless litigation", as there is a great divergence of opinion as to what may or may not constitute this incremental cost.

#30. Recommendation: That the owner's or controller's application for compensation for liabilites, costs and expenses be limited to those incurred by an owner or person in control who is not otherwise liable at common law for the spill.

d) Deductions and Exclusions from "Total Liability"

Within the context of the proposed conditions that the applicant should have a duty to proceed with due diligence to determine the net uncompensated liability it has for a spill (see Recommendations #13 and #25) the Panel concluded it is therefore unnecessary to have the detailed provisions found in s.6.1 of the Draft Regulation. The Panel also noted that s.6.1 has received many varying interpretations and for that reason alone should be either clarified or omitted from the Regulation.

#31. Recommendation: That s.6.1 be deleted in light of the general recommendation concerning the determination of net uncompensated liability and the exclusion of amounts received and payable found in Recommendations #13 and #25.

Section 8(4)(a) provides that "damages and expenses" incurred as a result of the applicant's failure to carry out its statutory duty to clean up and restore, should be subtracted from the amount otherwise payable as compensation.

It is the Panel's recommendation that these "damages and expenses" should instead be excluded from the total liability used in the formula, and not deducted from the amount otherwise payable.

Furthermore, in s.8(4)(a) the word "reasonably" should be inserted at the end of the second line to qualify the losses, damages, costs or expenses that could have been prevented by the applicant.

#32. Recommendation: That losses, damages, costs and expenses that could have been reasonably prevented by the applicant should be excluded from the applicant's "total liability" as used in the formula for determining the amount of compensation.

Section 8(4)(b) provides that "damages and expenses"incurred as a result of the applicant's failure to comply with any order or recommendation, should be a deduction from the amount otherwise payable as compensation. It is the Panel's recommendation that these "expenses" should be instead excluded from the total liability used in the formula. Further, submissions were received which critically addressed the onerous nature of this provision and the Panel finds merits in those criticisms. (For further discussion see comments for Recommendation #42.)

#33 Recommendation: That s.8(4)(b) be re-drafted to exclude from the amount of the owners'or controllers "total liability" the "damages and expenses" arising out of a failure to reasonably co-operate with the government official in charge of directing the clean-up and restoration.

e) Definitions

Section 3 of the Draft Regulation defines a number of terms on which submissions have been received. The Panel would like to address the following :

i) Classes and Specified Deductibles

In light of the many submissions voicing concern regarding the availability of insurance at reasonable rates to cover the additional potential liabilities that may be created by Part IX of the Act, the Panel proposes three Classes of Applicants for the purposes of determining the applicable specified deductible.

In a general way, this proposal recognizes the varying abilities of the public to insure or absorb the financial risk exposure of Part IX and at the same time it maintains an incentive for owners and persons in control to take appropriate steps to prevent spills.

#34. Recommendation: New amounts for specified deductibles be established for three new classes of applicants as follows:

- **Class I to include all individuals, non-profit organizations and small municipalities and corporations.**
- **Class II to include all medium-sized municipalities and corporations.**
- **Class III to include all large municipalities and corporations.**

In the context of the insurance market disruption noted in Part V of this report,the Panel suggests that the specified deductible for each Class should be incrementally raised over the next three years to coincide with the anticipated restoration of capacity in the insurance market.

#35. Recommendation: That the following levels of specified deductibles be adopted for each class:

Year	Class I	Class II	Class III
1985/86	$200,000	$500,000	$1,000,000
1987	$300,000	$750,000	$2,000,000
1988	$500,000	$1,000,000	$5,000,000

In establishing the classification, the size of a corporation could be determined on the basis of the greater of its net assets at book value or gross revenue. This approach appears to be preferable to the complex "family of corporations" solution presently found in s.3(1)(c) of the Draft Regulation. (See Recommendation #37.) Municipalities could be measured by their gross revenue.

Within the time of the Panel's mandate, the Panel has not been able to generate meaningful data that would fairly represent what constitutes small, medium and large corporations and municipalities. If this concept is accepted, it is our belief that appropriate numbers could be generated.

#36. Recommendation: That the classification of corporations be determined by the greater of net assets or gross revenue. That the classification of municipalities be determined by gross revenue.

ii) "Assets"

There have been many comments regarding the determination of assets as presently defined in the Draft Regulation. In order to simplify this determination, an applicant who does not wish to provide financial evidence to qualify for a Class I or II Specified Deductible, may elect to be governed by the Class III Specified Deductible.

Furthermore, proof of assets and revenue should not require statements certified by a Chartered Accountant. A financial statement accompanied by affidavits of verification by the Chief Executive Officer of the corporation or the Chief Administrative Officer of the Municipality should be sufficient.

In determining the net asset value of a corporation, it is the Panel's view that the concept of the "family of corporations" as set out in the present definition of "assets" should be deleted unless it is found that a practice develops of creating shell corporations for the purpose of limiting or minimizing exposure to Part IX liability. Should this become common practice the Panel would suggest that the Regulation could then be amended to counter this practice. However, the formula of the greater of assets or revenues has been put forward with the intention of discouraging the creation of shell companies.

In the evaluation of assets, consideration was given to using the present market value, but it is the Panel's opinion that this would unnecessarily complicate the Regulation and its administration.

In light of the above, many of the definitions presently found in the Draft Regulation will either require amendment or deletion (e.g. s.3(1)(c),(d),(f),(h),(j),(k),(l) and s.3(2)(a) and (b)).

#37. Recommendation: **That proof of assets and revenue be provided by a financial statement that, if unaudited, must be verified by affidavit of the Chief Executive Officer, and further that those corporations and municipalities that elect not to provide such proof be deemed to be in Class III. The assets and revenues to be used are those of the corporation only.**

f) Non-Residents

As stated earlier, it is the Panel's recommendation that the amount of compensation available to non-residents of Ontario should be limited to the amounts as presently set out in s.6.3. which limit the amount of payment to that which is recognized in the legislation of the non-resident's jurisdiction.

The computation in s.8(1) following the word "Secondly" dealing with extra-provincial assets appears to be unreasonably complicated and was widely criticized. The Panel concludes that the provision should be deleted.

#38. Recommendation: That the amount of compensation available for non-residents be governed by the amount available to Ontario residents under the reciprocal legislation of the applicant's jurisdiction; and further that the extra-provincial assets of a resident business should not be a consideration in the formula determining compensation in s.8(1).

4. Section 91 Amounts of Compensation for Spill Creditors

a) General Comment

Payments by E.C.C. to spill creditors are in large part intended to represent a financial safety net for third party victims of spills who, after making every attempt to collect compensation to cover their loss or damage from the party or parties legally responsible for the spill, found themselves with uncollectible judgments.

However, this "last resort" concept of E.C.C. is modified in the Draft Regulation, which now assigns to E.C.C. the right to make limited interim payments to spill creditors.

b) Amount of Compensation

In line with Recommendation #38 the amount of compensation available to non-resident spill creditors should be limited to the amounts as presently set out in ss.6.2 and 6.3, which limit the payments to the amount which is recognized in the legislation of the non-resident's jurisdiction.

#39. Recommendation: That the amount of compensation available for non-resident spill creditors be governed by the amount available to Ontario residents under the reciprocal legislation of the applicant's jurisdiction.

Section 10(2) of the Draft Regulation provides the limit of the amount that may be authorized by the Corporation for payment of compensation to a spill creditor for loss or damage caused by a spill. The Draft Regulation presently sets this limit at $300,000 each for bodily injury or death and for all other loss or damage, including loss or damage to property. It thus establishes a maximum compensation payment to any one spill creditor of $600,000.

The Panel received submissions suggesting that in a serious spill situation, this ceiling on compensation payments may make such payments entirely inadequate, particularly in light of the recent escalation of awards of damages in personal injury cases by Canadian courts.

No evidence or rationale was offered by any of the submissions at what level should be the limit. After a few years of claims experience and on the basis of comprehensive spill statistics, it should be possible to reassess the validity of the present pay-out ceiling. However, in the final analysis, the ultimate level of compensation payments will have to reflect the willingness of the Ontario taxpayers to underwrite the risks created by spills that contaminate the environment and it remains therefore, essentially a political question.

The Panel also received a submission that addressed itself to the question of how the present compensation ceiling could be made more flexible and thereby fairer to a spill creditor. The submission suggested that the present distinction between claims for bodily injury and claims for damage to property and other losses be abandoned and a new maximum payment of $500,000 inclusive for the total claim of any one applicant be established. The Panel is recommending the adoption of this suggestion for the following reasons :

> Firstly, the change will make a greater amount available to pay compensation for any type of loss or damage and thus, probably will result in a fairer compensation system.
>
> Secondly, it will streamline the administrative procedures of the E.C.C.

#40. Recommendation: That s.10(2)(b) 1 & 2 be deleted and the amount of $500,000 be the inclusive limit up to which the Corporation is empowered to authorize payment of compensation to spill creditors.

c) Deductions and Exclusions

Section 10(1)5.A requires the Corporation to withhold a deductible amount of $500.00 from each claim for loss or damage to property caused by a spill.

A submission critical of the size of the deductible pointed out that the $500.00 amount may represent a hardship to the less affluent person who finds himself the innocent victim of a spill. The Panel considered this question and concluded that it was not able to make a recommendation on this point.

Section 10(1)5.B provides for the deduction from the amount payable to a spill creditor any insurance coverage he may have that is applicable to the losses or damage suffered through the spill. The clause also provides that the amount of the insurance will still be deducted, even if the insured becomes or became disentitled or disqualified to receive the amount, or if he is obliged to return any amount received from the insurer because of neglect or default on his part.

In the view of the Panel, this latter provision may place an unduly harsh penaly on spill creditors who have been prudent enough to contract insurance coverage. It may be more equitable to delete the part of subcl.3 after the words "... loss or damage...". The Panel notes similar concerns with regard to s.10(1)6.C.

#41. Recommendation: That s.10(1)5.B.3 after the words "... loss or damage ..." be deleted.

Section 10(1)5.D reduces the compensation payment to the spill creditor that the Corporation may otherwise authorize by the amount that the total claim for loss or damage has been increased due to the spill creditors failure to comply with "...the lawful orders and recommendations of all public officers with respect to prevention, elimination and amelioration of adverse effects and restoration of the natural environment."

A number of submission critically addressed the onerous nature of that provision and the Panel finds merit in those criticisms. While the underlying concept may be sound, the wording of cl.D is too wide and lacks the necessary certainty to be fair and equitable to a spill creditor who finds himself in an emergency situation and is expected to comply with "...the recommendations of all public officers...".

#42. Recommendation: That s.10(1)5.D be re-drafted to exclude from the spill creditors claim any damages or expenses arising out of a spill creditor's failure to reasonably cooperate with the government official in charge of directing the clean-up and restoration.

Section 10.(1).1 excludes interest on a judgment or on costs from the amount the Corporation may authorize for payment to a spill creditor.

It is unclear from the wording whether the award of any pre-judgment interest (see s.138, Courts of Justice Act, S.O.1984, c.11) to the spill creditor would also be deducted from the total amount of the judgment.

The Panel has no recommendation on the substance of this provision beyond pointing out the need for clarification.

III. THE EXEMPTIONS FOR CERTAIN TYPES OF SPILLS

1. General Comment

In ss.15 to 19 the Draft Regulation classifies and exempts certain spills either from Part IX of the Act or only from the reporting duty under s.80 of the Act.

2. Exemptions from the Act

The exemptions in s.15 are for the purpose of avoiding conflict between provisions of Part IX and provisions of other parts of the Act, the Pesticides Act, R.S.O.1980, c.364 and the Ontario Water Resources Act, R.S.O. 1980,c.361. Under all of the above legislation, orders, approvals, certificates, licences and permits relating to a spill, or a spill causing activity, may be issued.

Many of the submissions received by the Panel were critical of all exemptions, but most frequently singled out was the exemption under s.15(1)1 of spills from sewage or water works approved under the Ontario Water Resources Act, many of which are operated by municipalities. Similiar objections were raised against the exemption in s.15(1)4 of spills from sewage systems which are operated under certificates of approval issued under Part VII of the Act. In both of the above cases, the exemption is only effective if a spill occurs at the location and by a physical method that are in accordance with the approval or certificate.

The contention of the critics of the proposed exemption of municipal sewage or water works is that municipal governments should set an example by its treatment of the environment and not be allowed to use operating approvals under other statutory provisions to escape the effect of Part IX of the Act.

On the other hand, one large urban municipality requested that it be granted a "...complete exemption of spills from water or sewage systems from Part IX of the Act...". Municipal submissions point to the much greater risk inherent in a public system arising from illegal dumping of contaminants by parties unknown that can critically affect the proper functioning of sewage treatment installations.

An apprehension was also expressed that the application of Part IX liability could expose a municipality to an unpredictably large increase in liability following severe weather and related basement flooding due to inadequate sewer capacity or unpreventable blockages, if such occurrences are held to be spills under Part IX of the Act.

While the Panel is sympathetic to concerns expressed by the municipalities, it is submitted that their concerns arise more out of a keen sense of caution rather than from the actual provisions of the Draft Regulation. The Panel is not convinced that the problem of municipal Part IX responsibility for illegal discharges of pollutants into municipal sewer systems and the question of legal responsibility for sewer back-ups and basement flooding cannot be answered by reference to Part IX of the Act itself and its definition sections. Similarly, comments can be made regarding the municipal concerns about legal liability under Part IX arising from the spreading of road salt and its storage in open air piles.

While the Panel does not feel that it is possible to delete the spill exemptions in s.15 of the draft regulations without creating confusion and conflict between the various approval and licensing procedures under applicable legislation, it recognizes that there is a potential for circumvention of the purpose and intent of Part IX of the Act.

#43. Recommendation: That the Ministry carefully analyse the procedures under the various statutes and regulations governing the issuance of the approvals, certificates, orders, licenses or permits referred to in s.15 of the Draft Regulation in order to establish that the purpose and intent of Part IX of the Act forms an integral part of the criteria when such permitting documents are issued.

Section 15(1)2.A exempts waste management systems or waste disposal sites operating under certificates of approval issued pursuant to Part V of the Act.

Under s.24(f) of the Act, the definition of "waste management systems" appears to include road transport vehicles used in the operation of the system. The point raised in one of the submissions is, whether the exemption from Part IX of waste management systems therefore extends to spills from waste hauling vehicles.

#44. Recommendation: That the question of an exempt status of waste hauling transport vehicles by s.15(1)2.A be clarified.

3. Ancillary Comment

A frequently recurring criticism of an alleged exemption from Part IX of the Act was aimed at Ontario Hydro. It appears that the exclusion of heat and radiation from the definition of "pollutant" in s.79 (2)(f) of the Act led many of the critics to the conclusion that this exclusion was intended to exempt an important part of Ontario Hydro operations from Part IX liability spills.

In this context the Panel notes that the exemption of heat and radiation in s.79(2)(f) of the Act does not appear to extend to the substances serving as carriers of heat or radiation. Thus, a spill of heated water or radioactive waste by Ontario Hydro or by any other person could give rise to legal responsibility under Part IX of the Act.

4. Exemptions from Reporting Duty

Section 16(2) exempts planned spills from the reporting duty under s.80 of the Act, provided that the owner or person in control notifies the Director in advance as to the time, location and details of the planned spill, including information about the potential effects of the spill. The planned spill cannot be carried out without the prior consent of the Director and while the spill is in progress, there must be monitoring for effects, which must then be reported to the Director.

As drafted presently, the subsection sets out a procedure that appears to imply an approval of the planned spill by the Director. This impression may give the owner or person in control a false sense of security, since despite the consent of the Director and the prescribed procedures, the spill is not exempt from Part IX (save s.80 reporting duty), and thus the owner and the person in control remain fully liable for clean up and restoration cost and any third party claims that may arise because of the spill. The subsection should be redrafted to more clearly reflect this fact.

#45. Recommendation: that s.16(2) be re-drafted to clearly state that it does not exempt from legal liability under Part IX, but only from the reporting duties under s.80 of the Act.

Section 17(3) enumerates five liquids that allow the application of this section to a spill. This list omits propane, natural gas and any other propellant fuels, which should be included.

#46. Recommendation: That the catalogue of liquids in s.17(3)(a) to (e) be replaced by the term "operating fuels and fluids".

IV. THE LIMIT OF LIABILITY PRESCRIBED FOR FARMERS AND THE QUALIFICATIONS FOR ENJOYING THE BENEFITS OF THE LIMIT

The farming community showed an active interest in this subject as evidenced by submissions from the Ontario Federation of Agriculture (OFA), and by some thirteen regional Federations as well as individual farmer comment.

1. Limit of Liability

Since many farmer representatives doubted their ability to obtain more than $500,000 of insurance after Part IX of the Act takes effect, it was presumed that the $500,000 limit (rather than the amount of insurance) would be the greater amount and thus the applicable limit as set out in s.14(4) of the Draft Regulation.

In considering this limit, the Panel's discussions with persons making submissions dealt only with the limit in s.14(4), and were not concerned with the provision of any limit for liability other than under Part IX of the Act.

One regional Federation, and the OFA stated that farmers should not have a ceiling on their liability. OFA's statement however was coupled to an objection to liability without fault. The other regional Federations generally supported the $500,000 limit.

If the proposed classification applicable to an owner or controller's specified deductible is adopted, farmers, as individuals, could potentially access E.C.C. at $200,000 incrementing over a period of three years to the $500,000 specified deductible ceiling (see Recommendations #34 & 35).

However, if access to E.C.C is restricted to those not otherwise liable at common law, a farmer with any degree of common law liability is deprived of access to E.C.C., and therefore it appears advisable that the limit in Part III should be retained.

#47. Recommendation: That no change be made in the current limit of farmer liability in Part III of the Draft Regulation (s.14(4)).

2. Farmers' Qualifications

The Draft Regulation in s.14(2) establishes as prescribed farmers those engaged in the production of an agricultural product on the farm, i.e. their own farm. In discussing with the various farm spokesmen the position of the "good neighbour" farmer helping an adjacent farmer with his more suitable equipment, the unanimous opinion was that in that situation, he should continue to enjoy the Part III limit.

With regard to the custom operator whose primary income is derived in this activity rather than from his own farm operation, opinion was generally that for incidents related to the custom operation, he should not be considered a farmer, but that while engaged in the operation of his own farm he should receive the benefit of the limit.

#48. Recommendation: That prescribed farmers include those who have incurred a liability under Part IX of the Act arising out of the production of an agricultural product whether on their own farm or the farm of another, except that a custom farming operator whose principal source of income is from such custom work should not be a prescribed farmer with respect to liability incurred under Part IX of the Act while engaged in such custom work.

3. Ancillary Comment

There was considerable discussion in every submission as to what consituted "normal farming practices" for the purpose of determining what may constitute a spill. Farmers were generally apprehensive of the problem which arises from urban encroachment, and the efforts of new neighbours to have the long established farmer reduce the manure exposure. There was no consensus among the farmers on this point.

Some suggested that the intensive farming operation which has evolved in recent years with a large number of animals confined in a zero grazing enclosure is an abnormal production of both animal waste and odour. The certificate of compliance in use by the Ontario Ministry of Agriculture and Food was cited by a number of spokesmen as a possible basis for determining what was "normal", but there was no consensus that this is a practical way to effectively deal with this matter.

The additional liability imposed on the farmer when the supplier of fertilizer requires transfer of title to the farmer at the point of shipment was a matter of concern. Our discussions with several farm insurers indicate that few farmers insure against the liability arising from the operation of a non-owned automobile. However, the new liability created by the off-premises transfer of ownership will motivate the purchase of non-owned automobile insurance, a form of insurance in wide use by the business community.

V. THE CONDITIONS WHICH MUST BE MET BY INSURERS TO EXERCISE THEIR RIGHTS OF SUBROGATION

A recurring objection by industry to Part IX of the Act for several years has been the alleged lack of availability of liability insurance following proclamation. The current world-wide disorientation of insurance markets has added fuel to this objection.

Many of the submissions noted the problems encountered by their members in buying insurance in this severely disrupted market, quite apart from the impact of Part IX of the Act taking effect. Indications from all sources are that this is the most severe constriction of available insurance coverage experienced by anyone in business today. Its duration is unpredictable but even the most optimistic observers do not expect a return to normal before 1988.

1. General Comment

The Insurance Bureau of Canada (I.B.C.),the representative of the private sector property and casualty insurance companies has had this legislation under active consideration for several years. In spite of public statements from others that insurance would not be available after proclamation of Part IX, I.B.C. and some of its principal member insurers have held their counsel on this point. By I.B.C.'s submission and subsequent dialogue with I.B.C. and insurers, there has been a clear indication of a search for workable conditions that will protect the interests of the Crown and, at the same time, enable insurers to provide coverage for liability arising out of Part IX of the Act.

Again, the comprehensibility factor showed, as I.B.C. and many of its individual members have been unable to bring into clear focus the insurer/Crown and E.C.C. relationship. They stated their confidence that mutually satisfactory conditions would be more readily achieved if the Regulation, in terms of subrogation procedures, was more easily understood by a significant number of insurers.

In support of this view they noted their proven ability to co-exist with OHIP (through the Health Insurance Act, R.S.O 1980, c.197) and the co-operation which normally prevails between layers of primary and excess insurers in the protection by one insurer of the interests of both in any recovery action without complex procedures.

2. Part V of the Draft Regulation

In considering the protection which the Crown needs under Part V of the Regulation, an understanding of the guidelines in use between primary and excess layers of liability insurers with respect to allocation of recovery, may be helpful. The primary insurer normally initiates and pursues the recovery action on behalf of all layers of insurance. The proceeds of recovery are allocated first to the top layer (either insurer, or insured's own uninsured interest), next to the immediate lower amount of insurance, and finally, if there are proceeds remaining, to the primary insurer. Thus the primary insurer is thoroughly motivated to maximize recovery in their own interest.

Similarly, in the context of insurers and the Crown under Part IX, insurers are in the primary role, and would firstly deprive themselves of recovery if their action on behalf of both interests, the Crown's and their own, is less than energetic.

In the following review of Part V, the specific comments of I.B.C. and the comparable conditions of the Health Insurance Act are noted.

In the context of the under-noted recommendation, s.21 providing for Class A insurers now appears acceptable to insurers.

Section 22(1)1 requires a Class A insurer to include in an action a claim for any payment which has been or may be made by the Crown. This is comparable to s.37 of the Health Insurance Act, which has proven workable to insurers.

Section 22(1)2 requires the insurer to give notice of such action to the Crown. I.B.C. stated that insurers would be readily capable of providing such notice, and they foresaw no problem with that requirement.

Condition 2 also requires insurers to follow the instructions of the Crown. OHIP has no similar requirement and in the insurers' position of the primary layer, and the last in line for recovery proceeds, the need for this condition is not apparent. In the Panel's view, a general obligation requiring the insurer to protect the interests of both parties, in the absence of a conflict of interest should suffice.

Condition 3 requires the insurer to pay to the Crown the amount paid by the Crown under Part IX, from the net proceeds of any action. Insurers' concern is with respect to an action which they may bring not only for the amount paid by the Crown, but for other causes of action as well. If the subsequent award is less than the total claimed, and the court has not apportioned it, the insurers believe that this condition would give the Crown first draw on the recovery to the detriment of the insurer's recovery with respect to the other causes of action. The Panel recommends that in the above case, condition 3 provide that the recovery be shared proportionately between the Crown and the insurer.

Condition 4 requires the consent of the Crown before the insurer settles. This condition is comparable to s.40 of the Health Insurance Act, which is not objectionable to insurers.

Section 22(2) provides that s.22(1) does not apply if the Crown consents, and thus should have the support of insurers.

Section 22(3) would be unnecessary if in s.22 (1)2, the obligation to follow the Crown's instructions is dropped.

#49 Recommendation : **That in s.22(1)2, the obligation on the insurer to follow the Crown's instructions be replaced by a general obligation on the insurer to protect the interests of both the Crown and the insurer.**

That in s.22(1)3, in the case of an unapportioned award which includes other causes of action the recovery be shared proportionately between the Crown and the insurer.

3. Ancillary Comment

Statistical Assistance: The insurers have stated that their statistical facility has not segregated and identified spill incidents in the past. Ministry data are of some assistance to them, but since spill cost has not been quantified, they are of limited value.

For the future, insurers noted that since not all spills will be insured, the information collected by Insurers Advisory Organization, the statistical office of the insurers, will be partial only. They therefore welcomed the suggestion that the Ministry's information could supplement theirs and enable them to rate the spill exposure more precisely. If the reporting duty under s.80 of the Act is found to be not broad enough to obtain cost figures, information provided to E.C.C. by applicants could be used to enable the Ministry to compile a reliable and comprehensive data base.

VI. ANY OTHER MATTERS WHICH THE ACT AUTHORIZES TO BE DEALT WITH BY REGULATION IN RELATION TO PART IX OF THE ACT.

This term of reference finds its statutory authority in s.136(7) of the Act which in general allows for the prescribing of any matter authorized by Part IX in the form of regulation. The Panel has identified the following as some of the matters that could be dealt with within this term of reference:

1. The time limits for payment of compensation by the Crown,

2. The designation of persons authorized to initiate clean-up,

3. The designation of additional duties for the Corporation, and

4. The designation of additional duties of an inspector of the Corporation.

1. The Time Limits for Payment of Compensation by the Crown

The Panel considers that ss.89(1) and 97(2) of the Act permit the prescription within the Regulation of the time and conditions under which payments may be authorized. The Panel in its discussion of the first term of reference relating to conditions to be met by applicants, has made recommendations in this regard (see Recommendations #5, #15 and #22).

2. The Designation of Persons Authorized to Initiate Clean-Up

Section 88(1)(c)of the Act permits the designation by regulation of a person or member of a class of persons who may initiate clean-up and restoration activities.

Section 88(4) of the Act provides that a person or class of persons so designated have the right to compensation from the owner and the person having control of the pollutant for "all reasonable cost and expense" thus incurred. That right may be enforced in a court of competent jurisdiction.

The Panel did receive a submission requesting that the following class of persons be so designated:

> A Band Council of an Indian Community on reserve land under federal jurisdiction of the Indian Act and within the boundaries of Ontario.

This is a matter that the Minister may wish to consider. Otherwise, the Panel, does not recommend the designation of any person or class of persons by regulation pursuant to s.88(1)(c) of the Act.

3. The Designation of Additional Duties for the Corporation

Presently the Corporation, as outlined in s.101 of the Act, has the following powers:

- to receive and assess applications for compensation,
- to authorize payments of compensation,
- to take action or commence proceedings where authorized, and
- to carry out such other duties as prescribed by regulation.

a) Discretionary Power

The Panel, in other areas of this report, has made recommendations containing proposals that would give the Corporation power to exercise its discretion, such as the waiving of a condition required of an applicant seeking compensation.

It is the Panel's recommendation that if the Corporation is to be given such discretionary powers by regulation, it is important that clear objectives be established within the Regulation for the exercise of such powers.

For the purpose of illustration the proposed discretionary power of the Corporation to waive the condition relating to court actions should only be exercised where the E.C.C. is of the opinion that, as a result of the financial state of a judgment debtor, any further steps by the applicant are viewed by the Corporation as "throwing good money after bad".

It is the concern of the Panel that, if the basis upon which the discretion may be exercised is unclear, there exists the possibility that the Corporation would feel restrained and as a result the power would rarely be exercised.

b) Reciprocity Determination

Pursuant to s.6.2 of the Draft Regulation, the Corporation must determine whether a jurisdiction, other than Ontario, has legislation that is "similar to Part IX of the Act." Section 4(2)(e) of the Draft Regulation addresses the reciprocal nature of compensation to non-residents but does not make this determination subject to the opinion of the Corporation.

It is the recommendation of the Panel that if the Corporation is to determine reciprocity, then a clear framework should be included within the Regulation as to the basis to be applied in performing such a function.

The Panel suggests that the framework should establish the timing for the determination of reciprocity (e.g. dates of spill, damage, or judgement), along with other appropriate tests to be applied for any given spill (see Appendix A for an examination of the two provisions in the Draft Regulation which address reciprocity).

It is further suggested that if the Corporation is to be given the duty to determine reciprocity it should also be given the right to be able to pre-determine which jurisdictions meet the applicable tests and make such information available to the public. Thus, unless changes occur in the jurisdiction's legislation, an applicant may be able to readily and without overwhelming costs, establish whether reciprocity exists.

4. The Designation of Additional Duties of an Inspector of the Corporation

The Panel did not receive any submission which specifically addressed the duties of an inspector appointed by the Corporation. Presently, those duties outlined in s.105 of the Act include:

- assessment of compensation applications, and

- to perform any additional investigation that may be necessary or required by the Corporation

Section 105(2)(c) of the Act provides for the designation by regulation of any additional duties.

The Panel suggests that if additional duties are to be given to these inspectors, care be taken to ensure that their function does not duplicate that already provided by the Ministry.

APPENDIX A

RECOMMENDATIONS AS TO FORM AND STRUCTURE

I. CONSISTENCY BETWEEN PART I AND PART II OF THE DRAFT REGULATION

There are a number of provisions in the compensation schemes provided in Parts I and II of the Draft Regulation that could be termed as being of general application. It is suggested that such provisions be consistent in their application, whether as a condition of compensation from the Crown or the Corporation.

The following table outlines those sections which may be considered as being of general application:

DESCRIPTION OF PROVISION	PART I	PART II
application form, etc.	s.2.1.A	s.5.2.A
*disclosure from others	s.2.3.A	s.5.2.D
*access, survey, copies, etc.	s.2.3.B	s.5.3
no settlement w/o consent	s.2.6.A	s.5.5
*include all persons in action	s.2.6.B	s.9.3(i)
*assignment of rights	s.2.6.C	s.9.3(iv)C
*no payment where action dismissed	s.2.8.A	s.10(1)4

There are sections within Part II of the Draft Regulation that should be of general application but are not found in Part I. Such sections are outlined in the following table:

DESCRIPTION OF PROVISION	PART II
no misrepresentation	ss.5.4, 12.2
inform of changes after payment	ss.9.12, 12.3
repayment of amounts recovered	s.12.1

* Applicable only if the Panel's Recommendations are not implemented.

II. PART II OF THE DRAFT REGULATION

It has been suggested that the provisions concerning the compensation of spill creditors be placed in a separate part from those concerning owners and persons in control.

There are provisions in Part II of the Draft Regulation concerning the calculation of the amount of compensation available to a spill creditor that are not addressed in the comparable provisions for owners and persons in control. It is suggested that such provisions be addressed in both situations. The following table outlines some of those sections that may not be found in the provisions in Part II regarding compensation to owners and persons in control.

DESCRIPTION OF PROVISION	PART II
interest on judgment excluded	s.10(1)1
legal costs included	s.10(1)2,3

III. RECIPROCITY

The concept of residency appears in s.4(2)(e) and s.6.2., however, it is expressed differently in each section. Section 4(2)(e) uses the phrase "...a person who ordinarily resides outside Ontario..." while s.6.2 uses the phrase "...an applicant who does not ordinarily reside in Ontario ...". It is suggested that s.4(2)(e) be made consistent with s.6.2.

Section 4(2)(e) expresses the test of reciprocity to include "...a jurisdiction where the law is in effect on the day that the spill occurs provides to persons who reside in Ontario recourse of a substantially similar character to that provided by Part IX of the Act and the regulations relating to Part IX...".(emphasis added)

Section 6.2 uses a different language, "...a jurisdiction in which the applicant ordinarily resides has legislation that, in the opinion of the Corporation, is similar to Part IX of the Act ...". (emphasis added)

It is sugested that the text as outlined in s.4(2)(e) is more appropriate.

A concern was raised in a submission, that s.4(2)(e) may exclude Indians living on federal reserve lands within Ontario. This matter may require clarification.

IV. CARETAKING

1) In s.6.3 of the Draft Regulation the phrase "where paragraph 2 applies" should be replaced with "where an applicant is entitled under paragraph 2 of this section";

2) In s.7.5 of the Draft Regulation the word "make" should be replaced with "authorize";

3) In s.9.3(iv)B and s.10(1)3.B the word "taxed" should be replaced with "assessed" to bring the Regulation in line with the Ontario Rules of Civil Procedure;

*4) In s.9.3(iv)B of the Draft Regulation the word "and" in the third line after the word "basis" should be replaced with "or", as it does not appear to be practical to have costs assessed on both a party and party basis and a solicitor and client basis.

V. NUMBERING SCHEME

There does appear to be a lack of consistency within the Draft Regulation concerning the numbering of sections, subsections, etc. (e.g. "9.3(iv)B" and "10(1)3B"). It is suggested that the numbering scheme be reviewed to confirm that standard legislative drafting practices are applied.

* Applicable only if the Panel's Recommendations are not implemented.

APPENDIX B: NOTICE OF MEETINGS

ENVIRONMENTAL PROTECTION ACT
SPILLS REGULATION
NOTICE OF MEETINGS

The Minister of the Environment, the Honourable Jim Bradley, has established a Spills Advisory Panel with the following Terms of Reference:

1. To obtain the Public's views on the proposed Regulation under Part IX of the Environmental Protection Act; and
2. To make recommendations to the Minister on amendments to the proposed Regulation by August 31, 1985.

The Advisory Panel has been specifically requested to obtain the Public's advice on the following matters:

a) The conditions which must be met in order to obtain compensation from the Crown under sections 89 or 91 of the said Act.

b) The amounts of compensation which may be payable.

c) The exemptions for certain types of spills.

d) The limit of liability prescribed for farmers and the qualifications for enjoying the benefits of the limit.

e) The conditions which must be met by insurers to exercise their rights of subrogation.

f) Any other matters which the Act authorizes be dealt with by Regulation in relation to Part IX of the Act.

The Advisory Panel will receive oral or written submissions.

Written submissions should be received by the Advisory Panel by August 8, 1985. Each submission should be preceded by an executive summary of not more than four pages in length. Persons wishing to make oral submissions, in either official language, should notify the Advisory Panel Executive Coordinator at least 48 hours in advance of the desired meeting date to arrange for an appointed time of appearance before the Advisory Panel.

MEETING SCHEDULE AND LOCATIONS

August 12, 15, 26, 1985—Hearing Room #2, 21st Floor, 180 Dundas Street West, Toronto, Ontario

August 13, 1985—Holiday Inn, St. Catharines, Ontario

August 16, 1985—Holiday Inn, Thunder Bay, Ontario

August 19, 1985—Holiday Inn, Chatham, Ontario

August 21, 1985—Holiday Inn, Kingston, Ontario

August 23, 1985—Holiday Inn, Sudbury, Ontario

MEETING TIMES

2:00 p.m. – 4:30 p.m.
7:00 p.m. – 8:30 p.m.

On request, the Advisory Panel is prepared to hold public meetings on August 8 and 9, 1985, in Toronto in advance of the established schedule to hear urgent oral submissions.

Single copies of the proposed Spills Regulation may be obtained from the Executive Coordinator, John Manuel, P. Eng., in Toronto at (416) 965-8925.

By order of the Advisory Panel
John G.W. Manzig, Chairman
Janette M. MacDonald
Peter Armour

Ontario
Ministry of the Environment

Hon. Jim Bradley, Minister
Dr. Allan E. Dyer, Deputy Minister

AVIS DE RÉUNIONS

LOI SUR LA PROTECTION DE L'ENVIRONNEMENT
RÉGLEMENTATION EN MATIÈRE DE DÉVERSEMENTS

Le ministre de l'Environnement, l'honorable Jim Bradley, a créé un comité consultatif sur la réglementation en matière de déversements qui a pour mandat :

1) de recueillir les vues de la population sur le projet de règlement présenté en vertu de la Partie IX de la Loi sur la protection de l'environnement, et
2) de présenter des recommandations au ministre, d'ici le 31 août 1985, en ce qui a trait aux amendements à apporter au projet de règlement.

Le comité consultatif devra en particulier obtenir l'avis de la population sur les questions qui suivent :

a) Les conditions qui doivent être remplies pour obtenir une indemnisation de la Couronne en vertu des articles 89 et 91 de ladite loi;
b) le montant de l'indemnisation qui pourra être accordée;
c) les exemptions relatives à certains types de déversements;
d) la limite de responsabilité prescrite pour les fermiers et les conditions dans lesquelles ils pourront bénéficier de cette limite;
e) les conditions dans lesquelles les assureurs pourront exercer leurs droits de recours;
f) toutes les autres questions qui relèvent du règlement établi en rapport avec la Partie IX de la loi.

Des mémoires pourront être présentés aussi bien oralement que par écrit au comité consultatif. Les mémoires écrits doivent parvenir au comité d'ici le 8 août 1985. Tous les mémoires doivent être précédés d'un condensé d'au plus quatre pages. Les personnes qui désirent présenter des mémoires oralement dans l'une des deux langues officielles doivent aviser le coordonnateur administratif du comité consultatif au moins 48 heures avant la date à laquelle la réunion doit avoir lieu afin de préciser l'heure à laquelle elles devront se présenter devant le comité.

DATES ET ENDROITS OÙ SE TIENDRONT LES RÉUNIONS

Les 12, 15 et 26 août 1985 (3 jours)—Salle d'audience nº 2, 180, rue Dundas ouest, 21e étage, Toronto (Ontario)

Le 13 août 1985—Holiday Inn, St. Catharines (Ontario)

Le 16 août 1985—Holiday Inn, Thunder Bay (Ontario)

Le 19 août 1985—Holiday Inn, Chatham (Ontario)

Le 21 août 1985—Holiday Inn, Kingston (Ontario)

Le 23 août 1985—Holiday Inn, Sudbury (Ontario)

HEURES DES RÉUNIONS

de 14 h à 16 h 30
de 19 h à 20 h 30

Sur demande, le comité consultatif est prêt à tenir des réunions publiques à Toronto les 8 et 9 août 1985, soit avant les dates prévues, pour prendre connaissance de mémoires oraux urgents.

On peut obtenir un exemplaire du projet de règlement sur les déversements en communiquant avec le coordonnateur administratif, M. John Manuel, ingénieur, à Toronto, au (416) 965-8925.

Par ordre du comité consultatif
John G. W. Manzig, président
Janette M. MacDonald
Peter Armour

Ontario
Ministère de l'Environnement

L'hon. Jim Bradley
Ministre
Allan E. Dyer, M.D.
Sous-ministre

DISTRIBUTION - Spills Regulation Information Package

Interested Parties	130
MOE Minister's Office	6
Deputy & ADM's Offices	14
Deputy Ministers	33
Communications Directors	39
M.P.P.'s & Ministers	125
Press Gallery	65
Daily Newspapers	44
Weekly Newspapers	302
Radio Stations	137
T.V. Stations	26
Cable T.V. Stations	99
Associations & Organisations	27
MOE Regional Directors	6
Municipalities	830
TOTAL	1,883

APPENDIX C: JULY, 1985 DRAFT REGULATION

REGULATION MADE UNDER THE ENVIRONMENTAL PROTECTION ACT

SPILLS

PART I

Conditions In Respect of Compensation From The Crown Under Section 89 of the Act

1. In this Part,

"applicant" means a person applying for compensation under section 89 of the Act, and includes the legal representative of a person under a legal disability.

2. The following conditions are prescribed for the purposes of section 89 of the Act:

1. An applicant must,

   A. apply in the form provided by Her Majesty in right of Ontario;

   B. submit with the application a copy of the order or direction in respect of which the cost and expense were incurred;

   C. submit with the application such written or recorded material as is related to the cost and expense and is available to the applicant; and

   D. provide to Her Majesty in right of Ontario such information in respect of the application as is required from time to time by Her Majesty and is available to the applicant.

2. An applicant must apply not later than,

A. one year; or

B. where Her Majesty in right of Ontario agrees in writing (either before or after the expiration of the period of one year) that the subrogated position of Her Majesty in respect of the compensation is not prejudiced by the delay, two years,

from the day that the order or direction was made or given in respect of which the cost and expense were incurred.

3. An applicant must,

A. request and authorize any person, other than a barrister and solicitor, whom the applicant has consulted in respect of the cost and expense, to produce to Her Majesty in right of Ontario any written or recorded material available to the person in respect of the cost and expense and to make full disclosure in respect of the consultation; and

B. for the purpose of the evaluation of the application,

1. give to Her Majesty's employees and agents access to any property and any written or recorded material available to the applicant,

2. permit the making of surveys, examinations, investigations, tests and inquiries, and

3. permit the making, taking and removing of samples, copies or extracts.

4. An applicant must disclose,

A. all payments received by the applicant or to which the applicant is entitled; and

B. all policies of insurance that insure the applicant,

in respect of the cost and expense.

5. An applicant must have followed every lawful order or direction that relates to him made under the

Environmental Protection Act, Ontario Water Resources Act or Pesticides Act.

6. An applicant,

   A. must not have settled his claim against any person in respect of the cost and expense without the prior consent in writing of Her Majesty in right of Ontario;

   B. must have included, in any action brought by the applicant in respect of the cost and expense, all persons (including Her Majesty in right of Ontario) liable at law for the cost and expense; and

   C. must assign to Her Majesty in right of Ontario any judgment obtained by the applicant from a court in respect of the cost and expense.

7. An applicant must not include in his application a claim in respect of the cost and expense for an amount of money,

   A. that the applicant has received from any other source;

   B. to which the applicant is or was entitled from any other source; or

   C. that the applicant is qualified to receive from any other source,

   that the applicant is not obligated to repay whether or not the applicant becomes or became disentitled or disqualified to receive the amount or, because of neglect or default by the applicant, the applicant is required or may be required to return the amount.

8. An applicant must not include in his application a claim for the difference between the total amount of the cost and expense and,

   A. the total amount, if any, (exclusive of costs) for which the applicant has obtained judgment in actions in respect of the cost and expense; and

   B. the total amount, if any, (exclusive of costs) for which the applicant has settled his claims in respect of the cost and expense.

9. An applicant that is a municipality, a regional municipality or other public authority must not include in its application a claim in respect of any cost or expense that it otherwise would have incurred in carrying out its statutory duty or authority if the order or direction under Part IX had not been issued.

PART II

Payment Authorized by the Environmental Compensation Corporation

3.-(1) In this Part,

(a) "amount" when used with respect to insurance, includes the amount of any deductible under the relevant insurance coverage that is not insured by another policy of insurance, the amount of which has been included in the calculation;

(b) "applicant" means an applicant under section 91 of the Act, and includes the legal representative of a person under a legal disability;

(c) "assets", in relation to a corporation that is an applicant for compensation, includes,

(i) the assets of a corporation that is controlled, directly or indirectly, by the applicant,

(ii) the assets of a corporation that controls, directly or indirectly, the applicant, and

(iii) the assets of a corporation that is controlled, directly or indirectly, by a corporation that controls, directly or indirectly, the applicant;

(d) "audited financial statement" means a financial statement supported by a certificate by an auditor licensed under the Public Accountancy Act stating that the financial statement was prepared in accordance with generally accepted accounting principles;

(i) "spill creditor" means a member of a class prescribed by section 4 other than a member of a class of owners of the pollutant or of persons having control of the pollutant;

(j) "taxable paid-up capital" means taxable paid-up capital as determined in accordance with the Corporations Tax Act and the regulations under that Act;

(k) "taxable paid-up capital used in Ontario" means taxable paid-up capital not deemed to be used in a jurisdiction other than Ontario as determined in accordance with the Corporations Tax Act and the regulations under that Act;

(l) "value", in relation to assets, means,

(i) the total book value of the assets as disclosed in an audited financial statement prepared as of the day immediately preceding the day of the spill, or

(ii) the total book value of the assets as disclosed in an audited financial statement prepared as of the fiscal year end of the person or organization to which the statement relates, if the statement is supported by a certificate by an auditor licensed under the Public Accountancy Act stating,

(A) that no material change has occurred in the total book value of the assets during the period of time between the day of the fiscal year end and the day on which the spill occurred, or

(B) that a material change has occurred in the total book value of the assets during the period of time between the day of the fiscal year end and the day on which the spill occurred, specifying the nature and amount of the material change and the adjustments to the financial statement consequent upon the material change.

(e) "Corporation" means the Environmental Compensation Corporation;

(f) "gross revenue", in relation to an applicant, means the aggregate of,

(i) all amounts received or receivable, depending on the method regularly used in computing income for the purposes of the Income Tax Act (Canada), by the applicant from carrying on business or from property otherwise than as or on account of capital, and

(ii) all amounts, other than amounts referred to in subparagraph (i), included in computing the applicant's income from a business or property by virtue of paragraph 12(1)(o) or subsection 12(3) of the Income Tax Act (Canada),

as disclosed in an audited financial statement prepared in respect of the applicant's fiscal year immediately preceding the day of the spill and, where the applicant is not a taxable resident of Canada, means the aggregate of the amounts that, in the opinion of the Corporation, would be disclosed in such an audited financial statement if the applicant were a taxable resident of Canada;

(g) "person liable", when used with reference to a spill, means a person against whom an applicant might reasonably be considered to have a cause of action for loss, damage, cost or expense in respect of the spill;

(h) "specified deductible" means,

(i) $400,000, where the value of the assets of the owner of the pollutant or of the person having control of the pollutant, as the case may be, is less than $1,000,000, or

(ii) 40 per cent of the value of the assets of the owner of the pollutant or of the person having control of the pollutant, as the case may be, where the value of the assets is $1,000,000 or more,

but, in any case, an amount not in excess of $1,000,000;

2. the use or disposal of the pollutant, or any matter, thing, plant or animal or any part of the natural environment affected or that reasonably may be expected to be affected by the pollutant;

D. a person carrying out or attempting to carry out a direction by the Director with respect to the use or disposal of the pollutant or any matter, thing, plant or animal or any part of the natural environment affected or that reasonably may be expected to be affected by the pollutant; or

E. an employee or agent of the Ministry carrying out or attempting to carry out a direction by the Minister with respect to the prevention, elimination and amelioration of adverse effects and restoration of the natural environment.

3. Persons who have incurred loss or damage as a direct result of the neglect or default of,

A. a person having control of the pollutant or a person who spills or causes or permits the spill, in carrying out their duty to give notice under section 80 of the Act;

B. an owner of the pollutant or a person having control of the pollutant, in carrying out their duty to do everything practicable to prevent, eliminate and ameliorate adverse effects and to restore the natural environment;

C. a person carrying out an order of the Minister with respect to,

1. the prevention, elimination and amelioration of adverse effects and the restoration of the natural environment, or

2. the use or disposal of the pollutant or any matter, thing, plant or animal or any part of the natural environment affected or that reasonably may be expected to be affected by the pollutant;

(2) For the purposes of clauses 3(1)(f) and (l),

(a) where a spill first occurs before Part IX of the Act comes into force and continues after it comes into force, the day referred to shall be deemed to be the day Part IX of the Act comes into force; or

(b) where the day on which a spill first occurs cannot be established, the day referred to shall be deemed to be the day on which the applicant first knew or ought ot have known of the spill or the day Part IX of the Act comes into force, whichever is the later.

4.-(1) The following classes are prescribed for the purposes of section 91 of the Act:

1. Persons who have incurred loss or damage as a direct result of the spill of the pollutant that causes or is likely to cause adverse effects.

2. Persons who have incurred loss or damage as a direct result of,

   A. prevention, elimination and amelioration of adverse effects and restoration by a municipality, a regional municipality or a person or a member of a class of persons designated for the purposes of subsection 88(1) of the Act;

   B. an owner of the pollutant or a person having control of the pollutant carrying out or attempting to carry out their duty to do everything practicable to prevent, eliminate and ameliorate adverse effects and restore the natural environment;

   C. a person carrying out or attempting to carry out an order of the Minister with respect to,

      1. the prevention, elimination and amelioration of adverse effects and the restoration of the natural environment, or

(f) an insurer within the meaning of the Insurance Act whose claim is in respect of a contract of insurance within the meaning of that Act.

5. The following conditions are prescribed for the purposes of section 91 of the Act:

1. An applicant must,

A. apply in the form provided by the Corporation;

B. submit with the application such written or recorded material as is related to the application and is available to the applicant; and

C. provide to the Corporation such information in respect of the application as is required from time to time by the Corporation and is available to the applicant.

2. Where an application includes a claim for payment for injury to a person,

A. the person injured must submit to such medical examinations and clinical tests as the Corporation or a legally qualified medical practitioner designated by the Corporation reasonably may require;

B. the person injured or the legal representative of the person injured must execute such authorizations as may be required,

1. for the purposes of the medical examinations and clinical tests, and

2. to enable the Corporation and the legally qualified medical practitioner designated by the Corporation to obtain any written or recorded material including medical reports, hospital records, radiological reports, radiological negatives and results of diagnostic tests related to the claim;

C. the applicant, the person injured or the legal representative of the person injured must produce to the Corporation all written or recorded

D. a person carrying out a direction by the Director with respect to the use or disposal of the pollutant or any matter, thing, plant or animal or any part of the natural environment affected or that reasonably may be expected to be affected by the pollutant; or

E. an employee or agent of the Ministry carrying out a direction by the Minister with respect to the prevention, elimination and amelioration of adverse effects and restoration of the natural environment.

4. Owners of the pollutant who, at any time on or after the date of the spill, are liable to pay compensation under Part IX of the Act.

5. Persons having control of the pollutant who, at any time on or after the date of the spill, are liable to pay compensation under Part IX of the Act.

(2) The classes prescribed by subsection (1) do not include,

(a) Her Majesty in right of Canada;

(b) an agency, board or commission of Her Majesty in right of Canada;

(c) a corporation owned or controlled, directly or indirectly, by Her Majesty in right of Canada;

(d) a person entitled to a benefit under the Workers' Compensation Act to the extent that the benefit is in respect of personal injury suffered as a direct result of a circumstance mentioned in clause 91(1)(a) of the Environmental Protection Act; or

(e) a person who ordinarily resides outside Ontario, unless the person ordinarily resides in a jurisdiction where the law in effect on the day that the spill occurs provides to persons who reside in Ontario recourse of a substantially similar character to that provided by Part IX of the Act and the regulations relating to Part IX; or

any claim that the applicant reasonably might be considered to have against any other person in respect of the same loss, damage, cost or expense and that the applicant is unable to pursue by reason of,

A. any act or omission to act of the applicant; or

B. failure to comply with a requirement of law or a contract.

2. In the case of an applicant who does not ordinarily reside in Ontario, the Corporation shall not authorize payment unless a jurisdiction in which the applicant ordinarily resides has legislation that, in the opinion of the Corporation, is similar to Part IX of the Act.

3. Where paragraph 2 applies, the Corporation shall not authorize payment of an amount in excess of the amount that would be paid as compensation to the applicant in the other jurisdiction,

A. if the applicant were ordinarily resident in Ontario;

B. if the applicable law were the legislation in the other jurisdiction; and

C. if the spill had occurred in the other jurisdiction.

7. The following conditions must be complied with before the Corporation authorizes payment under section 91 of the Act to an applicant who is the owner of a pollutant or the person having control of the pollutant:

1. Each application for compensation in respect of the spill of the pollutant by a person other than the applicant, and each claim that might be contained in the application, must have been settled with the Corporation, the applicant, or the insurer of the applicant, or the claim must have been prosecuted to final judgment or dismissal or otherwise finally determined.

material in respect of the person injured that is in the possession of or is available to the applicant, the person injured or the legal representative; and

D. the applicant, the person injured or the legal representative of the person injured must request and authorize any person, other than a barrister and solicitor, whom the applicant, the person injured or the legal representative has consulted in respect of the claim or the injury, to produce to the Corporation any written or recorded material available to the applicant, the person injured or the legal representative in respect of the claim or the injury and to make full disclosure in respect of the consultation.

3. An applicant,

A. must give the Corporation and the employees and agents of the Corporation access to any property and any written or recorded material available to the applicant;

B. must permit the making of surveys, examinations, investigations, tests and inquiries; and

C. must permit the making, taking and removing of samples, copies and extracts,

for the purpose of evaluating the application.

4. An applicant must not knowingly or recklessly misrepresent or omit any information in an application or a document or proceeding in respect of an application.

5. An applicant must not settle his claim for compensation against any person in respect of any matter included in the application without the prior consent in writing of the Corporation.

6. The following principles must be adhered to in calculating the amount of the payment authorized under section 91 of the Act to each applicant:

1. The amount that would otherwise be authorized for payment shall be reduced by an amount equal to the amount of

Firstly, calculate the lesser of,

A. the difference between,

1. the total liability of the applicant to other persons under Part IX of the Act plus the amount of the cost and expense incurred by the applicant in respect of the other persons that is reasonable, in the opinion of the Corporation, in preventing, eliminating and ameliorating the adverse effects caused by the spill and in restoring the natural environment, and

2. the total of the amounts recoverable in the opinion of the Corporation and the receipts by the applicant with respect to the spill, not including payments to or on behalf of the applicant by an insurer of the applicant,

less the greater of,

3. the applicable specified deductible, or

4. the amount of insurance coverage the applicant has that is applicable to liability arising from the spill;

and

B. the total liability of the applicant to other persons under Part IX of the Act to a limit equal to the aggregate of the limits prescribed by subsection 10(2) in respect of all spill creditors with respect to the spill plus the amount of the cost and expense incurred by the applicant in respect of the other persons that is reasonable, in the opinion of the Corporation, in preventing, eliminating and ameliorating the adverse effects caused by the spill and in restoring the natural environment.

Secondly,

A. where the applicant is a corporation, multiply the amount firstly calculated by the proportion that the applicant's taxable paid-up capital used in Ontario bears to the applicant's taxable paid-up capital; or

2. The application for compensation must be submitted to the Corporation within one year from the day on which all of the liability of the applicant in respect of the spill is finally determined by settlement, judgment or otherwise.

3. The applicant must be liable, at any time on or after the date of the spill, to pay compensation under Part IX of the Act.

4. The applicant must have brought action against all persons against whom he can reasonably be considered to have a cause of action in respect of the spill, and,

   A. have settled his claim against any person liable at law for the spill or have prosecuted the action against the person to final judgment or dismissal; and

   B. where the applicant has obtained final judgment against another person in respect of the spill, the applicant must have exercised all available legal remedies to obtain payment under the judgment.

5. The value of the assets of the applicant, together with the amount of the payment the Corporation proposes to make, must be sufficient, in the opinion of the Corporation, to satisfy the total liabilities of the applicant and, for the purpose of this condition, "assets" of an applicant that is a corporation do not include,

   A. the assets of a corporation that is controlled, directly or indirectly, by the applicant;

   B. the assets of a corporation that controls, directly or indirectly, the applicant; or

   C. the assets of a corporation (other than the applicant) that is controlled directly or indirectly, by a corporation that controls, directly or indirectly, the applicant.

8.-(1) The amount of the payment that may be authorized under section 91 of the Act to an applicant who is the owner of the pollutant or the person having control of the pollutant shall be calculated in the following manner:

the spill and to restore the natural environment; and

(b) the amount of any loss, damage, cost or expense in respect of the spill that could have been prevented if the applicant had complied with the lawful orders and the recommendations of all public officers with respect to prevention, elimination and amelioration of adverse effects and restoration of the natural environment.

(5) In determining the total liability of the applicant to other persons under Part IX of the Act and the amount of the cost and expense incurred by the applicant in respect of the other persons for purposes of subsection (1), no amount shall be included for which the applicant would have been liable or for a cost or expense for which the applicant would have been liable but for Part IX of the Act.

(6) In determining whether or not an applicant would have been liable for a cost or expense for purposes of subsection (5), the applicant shall be deemed to have been liable but for Part IX for any cost or expense to the extent that if the applicant did not incur the cost or expense some other person would have been entitled to recover an amount of damages from the applicant not included in total liability as a consequence of the applicant not carrying out the work for which the cost or expense was incurred.

9. The following conditions must be complied with before the Corporation authorizes payment under section 91 of the Act to an applicant who is a spill creditor:

B. where the applicant is not a corporation, multiply the amount firstly calculated by the greater of,

1. the value of the assets that are owned or controlled, directly or indirectly, by the applicant and are used in Ontario for business purposes, divided by the value of all assets that are owned or controlled, directly or indirectly, by the applicant and are used for business purposes; and

2. the applicant's gross revenue from all businesses and property in Ontario that are owned or controlled, directly or indirectly by the applicant, divided by the applicant's gross revenue from all businesses and property that are owned or controlled, directly or indirectly, by the applicant.

(2) For the purposes of subparagraph B of the calculation stated secondly in subsection (1), the values of assets and the amounts of gross revenues shall be such as are reasonable in the opinion of the Corporation.

(3) The calculation stated secondly in subsection (1) does not apply where the applicant is not a corporation and the spill is not related to a business owned or controlled, directly or indirectly, by the applicant.

(4) The amount that would otherwise be authorized for payment under section 91 of the Act to an applicant who is the owner of the pollutant or the person having control of the pollutant shall be reduced by an amount equal to,

(a) the amount of any loss, damage, cost or expense in respect of the spill that could have been prevented by the applicant if the applicant had carried out the duty under subsection 81(1) of the Act to do everything practicable to prevent, eliminate and ameliorate the adverse effects of

4. Condition 3 of these conditions does not apply where an applicant applies to the Corporation for payment of not more than the aggregate of $10,000 plus an interim payment of not more than an amount not exceeding 10 per cent of the balance of the applicant's claim up to the lesser of the limit under clause 10(2)(b) or the amount for which the Corporation determines it is prepared to give a consent to settlement of an action or actions by the spill creditor for payment in respect of the loss or damage and,

   i. the applicant delivers to the Corporation a release executed under seal by the applicant of all claims against Her Majesty in right of Ontario in respect of the spill if the claim does not exceed $10,000, and

   ii. no person liable to the applicant in respect of the spill pays or undertakes to pay the claim of the applicant within thirty days from the day that the applicant serves the last of his claims for payment upon the persons liable to the applicant in respect of the spill.

5. Any amount the applicant receives from a person liable to the applicant in respect of the spill shall be deducted from the amount otherwise determined under condition 4 of these conditions for the purpose of determining the amount that the Corporation may authorize for payment under condition 4.

6.(i) An applicant who commences an action mentioned in condition 3 of these conditions must give notice in writing as soon as possible to the Corporation if,

   A. a defendant does not file a statement of defence;

   B. a defendant does not appear in person or by counsel at the trial;

   C. a defendant does not appear in person at an examination for discovery; or

   D. it is proposed to sign judgment upon the consent or with the agreement of a defendant.

(ii) In any of the circumstances mentioned in subparagraph (i) of this condition, the applicant must,

1. The applicant must have made all reasonable efforts to ascertain the identity of every person liable to the applicant in respect of the spill.

2.(i) The applicant must serve every person liable to the applicant in respect of the spill with a notice in writing of the application and a claim in writing for payment of the full amount of the loss, damage, cost and expense set out in the application, but this condition does not require the applicant to serve a person whose identity is not known to the applicant if the applicant has made all reasonable efforts to ascertain the identity of the person.

(ii) Subparagraph (i) does not apply where an applicant complies with condition 3 of these conditions before applying to the Corporation for payment.

3.(i) The applicant must commence an action or actions against all persons liable to the applicant in respect of the spill whose identity is known to or can be ascertained with reasonable effort by the applicant.

(ii) The action or actions must be for not less than the full amount of the loss, damage, cost and expense for which application is made to the Corporation.

(iii) The applicant must prosecute the action or actions to final judgment or dismissal, but a dismissal that is not based on the merit of the applicant's claim does not meet this condition.

(iv) Where the final judgment is obtained by the applicant, the applicant must,

A. make all reasonable efforts to obtain payment of the amount of the final judgment from the judgment debtor or judgment debtors;

B. deliver to the Corporation the bills of costs of the applicant for the action taxed on a party and party basis and taxed on a solicitor and client basis; and

C. assign the final judgment to the Corporation, if the applicant is unsuccessful in obtaining payment of the full amount of the final judgment from the judgment debtor or judgment debtors.

A. deliver to the Corporation,

1. true copies of all documents in the action,

2. true copies of all recorded material that is relevant to the action and that is in the possession of or is available to the applicant, and

3. any other evidence, and information in respect of any other evidence, that is relevant to the action and that is in the possession of or available to the applicant; and

B. take such steps in the action as may be required in writing by the Corporation.

7. Upon request, the applicant must transfer to Her Majesty in right of Ontario any property in respect of which the Corporation proposes to authorize payment in an amount equal to the fair market value of the property.

8. The applicant must disclose to the Corporation entitlements to payment, claims for payment and payments received with respect to his loss or damage as a direct result of the spill from all sources, including insurance, benefits under the Workers' Compensation Act and assistance from a relief fund set up in respect of the spill.

9. Where the amount of the application is not more than $10,000, the applicant must execute a release under seal of all claims for compensation by the Treasurer of Ontario that may be authorized by the Corporation.

10. The applicant must give interim notice in writing of his loss or damage to the Corporation within two weeks after the day the applicant knows or ought to know of the loss or damage, but the Corporation may waive this condition where it is of the opinion that the ability of the Corporation to assess the loss or damage has not been prejudiced.

11. The applicant must make application in writing to the Corporation not later than,

A. two years from the day the applicant knows or ought to know of the loss or damage; or

B. one year from the day on which the applicant obtains a final judgment or settles an action for his loss or damage,

whichever is the later.

12. The applicant must inform the Corporation in writing of any change in the information in or in respect of the application forthwith after the change occurs.

10.-(1) The amount of the payment to a spill creditor authorized under section 91 of the Act shall be calculated in the following manner:

1. Interest on a judgment or on costs must not be included in the amount of the payment.

2. Where the spill creditor has settled a claim for loss or damage as a direct result of the spill with a person other than the Corporation or the Crown without commencing an action, a reasonable amount on account of the spill creditor's legal expenses related to the settlement shall be included in the amount of the payment.

3. Where the spill creditor has brought an action and obtained a final judgment entirely or partly for loss or damage as a direct result of the spill, and for costs,

A. where the final judgment is entirely for the loss or damage, an amount equal to the costs of the action taxed on a party and party basis shall be included in the payment; or

B. where the final judgment is partly for the loss or damage, an amount shall be included in the amount authorized for payment that is in the same proportion to the total costs of the action, taxed on a party and party basis, as the amount of the final judgment for the loss or damage is to the total amount of the judgment.

4. No amount shall be authorized for payment in respect of a claim by the spill creditor in an action that is finally dismissed.

5. The amount that would otherwise be authorized for payment shall be reduced by an amount equal to,

   A. $500 in respect of each claim by the spill creditor for loss or damage to property as a direct result of the spill and the expense of preventing, eliminating or ameliorating adverse effects and restoring the natural environment;

   B. where the amount of the spill creditor's claim for loss or damage mentioned in clause 87(2)(a) of the Act is less than the limit under subsection (2),

      1. any amount recovered by the spill creditor under final judgment of a court,

      2. any payment received by the spill creditor from a relief fund, and

      3. the amount of coverage of all policies of insurance, within the meaning of the Insurance Act, (other than life insurance) that is applicable to insure the spill creditor in respect of the loss or damage, whether or not the spill creditor becomes or became disentitled or disqualified to receive the amount or, because of neglect or default by the spill creditor, the creditor is required or may be required to return the amount;

   C. the amount of any loss or damage as a direct result of the spill that could have been prevented by the spill creditor if the spill creditor had taken reasonable measures for such prevention; and

   D. the amount of any loss or damage as a direct result of the spill that could have been prevented if the spill creditor had complied with the lawful orders and the recommendations of all public officers with respect to prevention, elimination and amelioration of adverse effects and restoration of the natural environment.

6. Where the amount of the spill creditor's claim for loss or damage mentioned in clause 87(2)(a) of the Act is greater than the limit under subsection (2), the limit shall be reduced by an amount equal to,

A. any amount recovered by the spill creditor under final judgment of a court;

B. any payment received by the spill creditor from a relief fund; and

C. the amount of coverage of all policies of insurance, within the meaning of the Insurance Act, (other than life insurance) that is applicable to insure the spill creditor in respect of the loss or damage, whether or not the spill creditor becomes or became disentitled or disqualified to receive the amount or, because of neglect or default by the spill creditor, the spill creditor is required or may be required to return the amount.

(2) The limit of the amount that may be authorized by the Corporation for payment to a spill creditor for loss or damage mentioned in clause 87(2)(a) of the Act is the lesser of,

(a) the sum of,

(i) where the spill creditor has obtained final judgment in an action or actions for the loss or damages, the amounts of judgments, including costs computed as mentioned in paragraph 3 of subsection (1), and

(ii) the amounts for which the spill creditor, with the prior consent in writing of the Corporation, has settled an action or actions by the spill creditor for payment in respect of the loss or damage; or

(b) $300,000 for each of the following:

1. Bodily injury to or death of each of one or more persons.

2. All loss or damage not referred to in paragraph 1 incurred by the spill creditor including loss or damage to property.

11. The amount of every payment authorized by the Corporation under section 91 of the Act shall be calculated as of the day that the payment is authorized by the Corporation.

12. A payment authorized by the Corporation under Part IX of the Act is subject to the following conditions:

1. The person to whom the Corporation authorizes the payment to be made shall repay to the Treasurer of Ontario an amount equal to any amount recovered or received by the person in respect of the loss or damage as a direct result of the spill that was not deducted in calculating the amount or the limit of the amount authorized by the Corporation for payment to the person.

2. The person who applied to the Corporation for authorization of the payment must not have knowingly or recklessly misrepresented or omitted any information in the application or in any document or proceeding in respect of the application.

3. The person who applied to the Corporation for authorization of the payment must have informed the Corporation in writing of any change in the information in or in respect of the application forthwith after the change occurred and whether the change occurred before or after authorization of the payment.

13. A certificate by the Corporation to the Treasurer of Ontario under section 97 of the Act shall be in Form 1.

PART III

Classes of Farmers

14.-(1) In this section, "agricultural products" includes,

(a) Christmas trees, eggs, fish, flowers, fruit, grains, herbs, honey, live stock, maple syrup, milk, mushrooms, nursery stock, nuts, poultry, seeds, sod, tobacco, vegetables and wood from a farm woodlot; and

(b) Christmas tree products, dairy products, egg products, fish products, fruit products, grain products, herb products, honey products, live stock products, maple syrup products, mushroom products, nut products, poultry products, seed products, vegetable products and wood products,

but does not include a manufactured article, unless the manufactured article,

(c) is produced on a farm from an agricultural product that is listed in clause (a) or (b) and that is produced on the farm; or

(d) is intended for use on a farm in the production of an agricultural product that is listed in clause (a) or (b) and that is produced on the farm.

(2) For the purposes of section 111 of the Act, the following classes of farmers are prescribed:

1. Farmers, each of whom is a natural person who is,

   A. an owner,

   B. a tenant, or

   C. a shareholder of a corporation that is an owner or tenant,

   of a farm in Ontario, and who is engaged in, and has incurred liability under Part IX of the Act arising out of the production of an agricultural product on the farm.

2. Farmers, each of whom is the spouse of a person described in Class 1 and who has incurred liability under Part IX of the Act arising out of the production of an agricultural product on the farm.

3. Farmers, each of whom is related to a natural person described in Class 1 by blood, marriage or adoption, who is engaged in work on the farm and who has incurred liability under Part IX of the Act arising out of the production of an agricultural product on the farm.

4. Farmers, each of whom is a corporation that owns or is a tenant of a farm in Ontario and that has incurred liability under Part IX of the Act arising out of the production of an agricultural product on the farm, if a majority of the shareholders holding a majority of the shares of the corporation are engaged in, or are related by blood, marriage or adoption to persons engaged in, the production of agricultural products on a farm in Ontario owned or rented by the corporation.

(3) For the purposes of subsection (2), a shareholder of a corporation who pledges or transfers a share in the corporation as security for a loan or other indebtedness shall be deemed to continue to be a shareholder in the corporation while he has the right to redeem the share.

(4) The amount of the limit of the liability of a farmer who is a member of a class prescribed by subsection (2) for the purposes of section 111 of the Act is the greater of $500,000 or an amount equal to the total of the limits of liability under all policies of insurance that insure the farmer against liability under Part IX of the Act.

PART IV

Classification and Exemption of Spills

15.-(1) The following are classified as Class I spills:

1. Spills of pollutants, each of which,

A. is from a sewage works or a water works for which an approval under the Ontario Water Resources Act or a predecessor thereof has been issued and is in force at the time of the spill; and

B. occurs at a location and by a physical method that are in accordance with the approval.

2. Spills of pollutants, each of which,

A. is from a waste management system or a waste disposal site for which a certificate of approval or a provisional certificate of approval under Part V of the Act has been issued and is in force at the time of the spill; and

B. occurs at a location and by a physical method that are in accordance with the certificate.

3. Spills of pollutants, each of which,

A. is a discharge in respect of which methods or devices, or both, of control or prevention have been approved by a certificate under Part II of the Act that is in force at the time of the spill; and

B. occurs at a location and by a physical method that are in accordance with the certificate.

4. Spills of pollutants, each of which,

A. is from a sewage system for which a certificate of approval under Part VII of the Act or a predecessor thereof has been issued and is in force at the time of the spill; and

B. occurs at a location and by a physical method that are in accordance with the certificate.

5. Spills of pollutants, each of which,

A. is a discharge of a pesticide with respect to which an order, licence or permit under the Pesticides Act has been issued and is in force at the time of the spill; and

B. occurs in accordance with the order, licence or permit.

2. The person having control of the liquid must give notice of the spill to the police force having jurisdiction in the area where the spill occurs.

(3) In this section,

"liquid" means,

(a) petroleum fuel;

(b) transmission fluid;

(c) hydraulic fluid;

(d) cooling fluid; and

(e) battery fluid,

contained in the operating systems of a vehicle registered under the Highway Traffic Act and not being transported as cargo.

18.-(1) Spills of water from reservoirs formed by dams, where the spills are caused by natural events, are classified as Class IV spills.

(2) A Class IV spill is exempt from Part IX of the Act.

19.-(1) Spills of pollutants from fires, where the pollutants are products of combustion of materials in a quantity not greater than the quantity of such materials normally found in residential properties of ten or fewer households, are classified as Class V spills.

(2) A Class V spill is exempt from Part IX of the Act.

(2) A Class I spill is exempt from Part IX of the Act if all orders, requirements and directions made under the Act, the Pesticides Act and the Ontario Water Resources Act with respect to the spill or the source of the spill have been complied with and the spill does not contravene any other part of the Act, any other regulations, any other federal or provincial Act or any municipal by-law.

16.-(1) Spills of pollutants that are planned are classified as Class II spills.

(2) A Class II spill is exempt from section 80 of the Act subject to the following conditions:

1. The Director must be notified in advance as to the time, the location and the details of the planned spill, including all available information about the potential effects of the spill.

2. The owner of the pollutant and the person having control of the pollutant must monitor the planned spill for effects and must report thereon to the Director.

3. The consent of the Director must be obtained before the planned spill is carried out.

17.-(1) Spills of liquid from the fuel or other systems of vehicles, where the spills are not in excess of 100 litres each, are classified as Class III spills.

(2) A Class III spill is exempt from section 80 of the Act subject to the following conditions:

1. The spilled liquid does not enter and is not likely to enter any surface water or water well.

PART V

Insurers

20. In this Part, "Corporation" means the Environmental Compensation Corporation.

21. Insurers who undertake in writing to the Corporation not to settle claims and not to commence actions in respect of persons to whom compensation may be paid under subsection 89(1) or section 97 of the Act except in accordance with the conditions set out in this Part, are classified as Class A insurers.

22.-(1) A Class A insurer is exempt from the application of subsections 89(10) and (12) and subsections 98(5) and (7) of the Act subject to the following conditions:

1. The insurer must include in an action commenced on behalf of a person referred to in section 21 a claim on behalf of the person with respect to any matter for which a payment of compensation has been or may be made by the Treasurer of Ontario under section 89 or 97 of the Act, as the case may be.

2. The insurer must give notice of any such action to the Corporation, and (except to the extent that Her Majesty in right of Ontario has taken carriage of the action with respect to any claims referred to in condition 1), must follow the instructions of the Corporation or Her Majesty in right of Ontario, as the case may be, with respect to such claims.

3. The insurer must pay to the Treasurer of Ontario the amount of any such claim, which has been paid by the Treasurer of Ontario, awarded in the action to the extent that there are proceeds of the action in excess of costs.

4. The insurer must not settle any such claim or action without the consent in writing,

A. where there may be an application under section 89 of the Act, of her Majesty in right of Ontario; and

B. where there may be an application under section 91 of the Act, of the Corporation.

(2) A condition in subsection (1) does not apply where,

(a) the Corporation or Her Majesty in right of Ontario, as the case requires, otherwise consents; or

(b) the insurer repays to the Treasurer of Ontario any payment under section 89 or section 97 of the Act.

(3) The provision of condition 2 requiring the insurer to follow the instructions of the Corporation or Her Majesty in right of Ontario does not apply where the insurer has advised the Corporation or Her Majesty in right of Ontario, as the case requires, in writing, that the insurer is unable to continue to prosecute the action on behalf of the Corporation or Her Majesty by reason of a conflict of interest or because the insurer has no further interest in the action.

23. This Regulation comes into force on the 29th day of November, 1985.

Form 1

Environmental Protection Act

Environmental Compensation Corporation

Certificate to Treasurer of Ontario under section 97 of the Act.

The Environmental Compensation Corporation certifies to the Treasurer of Ontario that .....
(complete name and description

.....
of person entitled to compensation sufficient for completing

.....
a cheque)

is entitled to compensation in the amount of $ .....

with respect to Claim Number .....

DATED at Toronto, this day of . 19...

ENVIRONMENTAL COMPENSATION CORPORATION:

.....
Chairman

.....
Secretary

Regulation Under Part IX of The Environmental Protection Act

Summary

The Regulation

1. Establishes the requirements for eligibility for

   (a) a payment from the Crown for costs and expense in carrying out a ministerial order under section 89 of the Act,

   (b) a payment authorized by the Environmental Compensation Corporation for compensation for loss resulting from a spill or costs and expense in carrying out an order or other duty to clean up under section 91 of the Act.

2. Provides formulas for calculating the amount of such payments.

3. Classifies and limits the liability of farmers under Part IX (the limits do not affect their liability for a spill at common law or otherwise than under Part IX).

4. Classifies and exempts certain types of spills from some provisions of Part IX.

5. Provides conditions under which insurers can exercise their subrogated rights with respect to spills without obtaining individual consents of the Crown or the Corporation which the Act would otherwise require under subsections 89(10) and 98(5).

Payment from Province - Two Types.

1. Through Ministry under section 89 for the cost or expense of third parties in carrying out orders or directions ("Orders") for which the owner or person in control ("Owner") is liable under clause 87 (2)(b).

Notes: Owner cannot recover under section 89.

Although an Owner is not liable under Part IX for loss or damage, if he
- took all reasonable steps to prevent spill (S.87(3)); or
- the spill was caused by third party (war, God, or sabotage)(S.87(3)(a)(b) and (c)),

the Owner is still liable (under clause 87(4)(b)) for clean up, including restoration and amelioration and (under clause 87(4)(a)) for damages resulting from neglect or default in carrying out these activities.

2. Through Corporation under section 91

- if a member of a prescribed class who meets prescribed conditions
  - for (a) loss or damage from
    - spill (S.91(1)(a)(i))
    - carrying out a duty (S.91(a)(ii))
    - neglect in carrying out a duty (S.91(1)(a)(iii))

  (b) reasonable expense carrying out Order (S.91(1)(b))

  (c) compensation payable by the Owner (S.91(1)(c)).

Note: No class has been prescribed for clause 91(1)(b), only for clauses (a) and (c). Therefore, recovery of cost and expense of carrying out an Order is made under section 89 and therefore, Owners can only recover if liable to pay compensation to third parties and hence can claim under clause 91(1)(c).

In the following pages "R.", refers to a section of the draft regulation, for example (R.15(1)1) refers to paragraph 1 of subsection 1 of section 15 of the regulation.

Rules for S.89 Compensation to Third Parties Carrying out Orders (pages 1-4)

- Use supplied forms and submit documentation and information (R.2.1) (page 1)
- 1 year limitation period extendible to 2 years (R.2.2.) (pages 1-2)
- Cooperate in assessing claim (R.2.2, 3 & 4) (page 2)
- Have complied with clean up Orders (R.2.5) (pages 2-3)
- Completed or assigned all possible claims against others and not settled without consent (R.2.6) (page 3)
- Deduct other recoveries (R.2.7) (page 3)
- Limit on payment - an amount equal to what court has awarded applicant or what he has settled for (R.2.8) (page 3)
- Public authorities cannot make claims with respect to expenses they would have incurred in any event.(R.2.9.) (page 4)

Rules for S.91 Compensation

- Be a member of a class for type of payment sought (R.4(1) & (2)) (pages 7 to 10)
- Use supplied forms and submit documentation and information (R.5.1)(page 10)
- Cooperate in assessing claim (R.5.1, 2 & 3) (pages 10 & 11)
- Applicant must not settle without Corporation's consent (R.5.5) (page 11) (A potential applicant may of course settle a claim directly with person liable if he does not intend to make an application.)
- Recovery reduced by amounts attributable to applicant's fault (R.6.1) (pages 11 and 12)
- Non-residents cannot recover more than Ontario resident could if situation reversed. (R.6.2 & 3) (page 12)
- Special Rules for Owners (R.7 & 8) (pages 12 to 16) (see below)
- Special rules for Spill Creditors (R.9 & 10) (pages 16 to 23) (see below)
- Date of calculation of compensation (R.11) (page 23)
- Any subsequent recoveries repaid (R.12.1) (page 23)
- No compensation to persons who make misrepresentations (R.12.2) (page 23)
- Must advise of changes in circumstances (R.12.3) (page 23)

Corporation Payments to Spill Creditors (S.91)

Special Rules for payments authorized by Corporation to Spill Creditors (not Owners).

- Applicant must attempt to identify any person liable (R.9.1) (page 17)
- Applicant must notify every person liable, who has not been sued, of application and make claim. (R.9.2) (page 17)
- Applicant with a claim over $10,000 + 10% must sue every person liable, to judgment and attempt to collect (R.9.3) (page 17)
- An Applicant may receive a payment of up to $10,000 plus 10% of the agreed balance of his claim without suit. Maximum interim payment is $69,000. (R.9.4) (page 18)
- Recoveries from others are deducted from payments made under previous condition (R.9.5) (page 18)
- Applicant cannot obtain default or consent judgment unless Corporation acquiesces (R.9.6) (pages 18 & 19)
- Applicant must give to Crown any property he receives full compensation for (R.9.7) (page 19)
- Applicant must disclose all entitlements to payment from third parties (R.9.8) (Page 19) (which are deducted, see below)
- Must give notice to Corporation within two weeks of discovering loss (can be extended)(R.9.10) (page 19)
- Must make formal application within two years or, if later, one year from obtaining judgment (R.9.11) (pages 19 & 20)
- Must advise Corporation of any changes (R.9.12) (page 20)

Financial Calculations

- No interest (R.10(1)1) (page 20)
- Legal expenses included (R.10(1)2 & 3) (page 21)
- If Court dismisses action for a head of claim, cannot include in claim (R.10(1)4) (page 21)
- $500 deductible (except for personal injury and except for costs of carrying out order) (R.10(1)5.A) (page 21)
- Amount of recoveries from judgments, insurance or relief funds are deducted from claim (or from limit, if claim exceeds limit) (R.10(1)5.B and 10(1)6) (pages 21 & 22)
- Amount of damage that would not have arisen if spill creditor took reasonable steps and complied with orders is deducted (R.10(1)5.C & D) (page 21)

Maximum Claim per Person

- Amount of judgments or approved settlements up to $300,000 and $300,000 for each injury or death (R.10(2)) (page 22)
- Limit does not apply to costs of carrying out orders (R.10(2)(b)2) (page 23)

Corporation Payments to Owners (or Persons in Control) (S.91)

Special Rules for payments authorized by Corporation to Owners.

Note: Owners only receive reimbursement for compensation paid to third parties and costs of cleaning up other people's property. (R.8(1)A & B) (pages 13 & 14)

- All claims by third parties must have been finally determined (R.7.1) (page 12)
- Limitation period - one-year from final determination (R.7.2) (page 13)
- Applicant must have been liable to pay compensation (R.7.3) (page 13)
- Applicant must have sued to judgment any third parties who may be liable and attempted to collect (R.7.4) (page 13)
- Applicant cannot be insolvent (otherwise payment could be distributed among non-spill creditors). (R.7.5) (page 13)

Calculation Rules for payments to Owners. (R.3(1)(h) and R.8) (pages 5 and 13 to 16)
See Chart.

Farmers

Liability of Farmers (including incorporated family farms) limited to $500,000 or amount of insurance, if higher (S.111 and R.14)

Note: Only limits Part IX liability.

Classification and Exemption of Spills

- Spills approved under various statutes are exempt from Part IX subject to owner having complied with all other statutes, bylaws, orders, etc. (Most discharges of this type probably will not fall within definitions of spill in first place. Provision is to remove anxiety.) (OWRA - R. 15(1)1) (EPA Part V (waste) - R.15(1)2) (EPA Part II (air) - R.15(1)3) (EPA Part VII (sewage systems) - R.15(1)4) (Pesticides - R.15(1)5)
- Spills planned in advance and approved are exempt from S. 80, the notice provision (R.16)
- Small spills of gas and other operating liquids from motor vehicles are also exempt from S.80, if water not polluted and police notified (R.17)
- Dam collapses are exempt from Part IX (R.18)
- Products of combustion from household size (fewer than 11 households) fires are exempt from Part IX (R.19)

Insurers

Insurers cannot exercise subrogated rights unless have consent of Crown (S.89(10) & (12)) or Corporation (S.98(5) & (7)). This is to ensure Crown's payments are kept to minimum.

Insurers who comply with procedures in Regulation do not need to obtain advance consent (R.21 & 22).

Notification

*S.14 of the EPA requires reporting of certain discharges and is repealed by a Proclamation which can be issued under Section 14(3). It is proposed not to issue this proclamation. A separate regulation would be made with respect to section 14 to exempt from its reporting requirement anything reported under section 80. This would eliminate overlapping reporting requirements and at the same time ensure continued reporting of certain incidents that either are not initially subject to or are exempted from Part IX. The same remarks apply to the notice provision in the Ontario Water Resources Act.

FIRSTLY — LESSER OF 8(1)

A. LIABILITY + COST & EXPENSE OF CLEAN UP FOR BENEFIT OF OTHERS (8(1)A.1) - RECOVERIES (OTHER THAN INSURANCE) (8(1)A.2) - GREATER OF (8(1)A.3&4):
- VALUE OF ASSETS (MINIMUM DEDUCTION-$400,000 MAXIMUM-$1,000,000) 3(1)(h)
- INSURANCE

B. LIABILITY UP TO CEILING* ON PAYMENTS BY CORPORATION TO OTHERS (8(1)B.) + COST AND EXPENSE OF CLEAN UP FOR BENEFIT OF OTHERS

*R 10(2) $300,000 FOR PROPERTY DAMAGE — FOR EACH SPILL CREDITOR

300,000 FOR DEATH OR INJURY — FOR EACH SPILL CREDITOR

8(1) SECONDLY DOES NOT APPLY TO NON-BUSINESS SPILLS 8(3)

FIRSTLY X $\frac{\text{ONTARIO BUSINESS*}}{\text{WORLDWIDE BUSINESS*}}$

*FOR CORPORATIONS - BUSINESS = TAXABLE PAID UP CAPITAL
*FOR OTHERS - BUSINESS = ASSETS OR REVENUE (WHICHEVER PRODUCES GRESTEST RATIO)

SUBTRACT 8(4) FROM FIRSTLY (NON-BUSINESS) OR SECONDLY (BUSINESS SPILLS)

AMOUNT OF ANY LOSS, ETC., WHICH COULD HAVE BEEN ELIMINATED BY APPLICANT CLEANING UP, ETC., PROPERLY.

NOTE: 8(5)&(6) LIABILITY AND COST AND EXPENSE FOR "FIRSTLY" CALCULATION DO NOT INCLUDE AMOUNTS FOR WHICH APPLICANT WOULD HAVE BEEN LIABLE EVEN IF PART IX HAD NOT BE PROCLAIMED IN FORCE.

APPENDIX D: LIST OF SUBMISSIONS

1. Submissions Made to the Panel (*oral only)

Evan Arnold*

Earl Bennett

Board of Trade of Metropolitan Toronto

Canadian Agricultural Chemical Association

Canadian Chemical Producers' Association

Canadian Environmental Law Association

Canadian Federation of Independent Business

Canadian Manufacturers Association

Canadian National Railway Company

Canadian Paint and Coatings Association

C-I-L Inc.

City of Toronto, Department of Public Works

Consumers Gas Company Ltd.

D.& D. Group*

Leslie Daniels, representing:
a) Better Understanding, b) Local Council of Women, and c) Niagara Ecological Committee*

Dow Chemical Canada Inc.

Dundas County Federation of Agriculture

Du Pont Canada Inc.

Ray Durham*

East Nipissing and Parry Sound Federation of Agriculture

Environmental Health Committee, Northern Toronto Health Area

F.J. Faught

Federation of Ontario Naturalists

Pat Galt*

Group of Eight
(Citizens Coalition on Toxic Waste Candidate Sites)

Haldimand-Norfolk Organization for a Pure Environment

Halton Federation of Agriculture

Hamilton-Wentworth Federation of Agriculture

Hastings County Federation of Agriculture

G. Heighington*

Home Energy Group

Inco Ltd.*

Insurance Brokers Association of Ontario

Insurance Brokers Association of Thunder Bay

Insurance Bureau of Canada

Kent County Federation of Agriculture

Lambton Federation of Agriculture

Lanark County Federation of Agriculture*

Lansing Buildall

Ken LeBlanc*

Leeds Federation of Agriculture

Marine Clean*

Middlesex Federation of Agriculture

Municipality of Metropolitan Toronto

Niagara Federations of Agriculture

Norfolk Federation of Agriculture

Ontario Federation of Agriculture

Ontario Forest Industries Association

Ontario Mining Association

Ontario Mutual Insurance Association

Ontario Natural Gas Association

Ontario Petroleum Association

Ontario Risk and Insurance Management Society

Ontario Trucking Association

Ontario Waste Management Association

Operation Clean Niagara*

Seldon Parker

Peel Federation of Agriculture

Petro Canada

Petroleum Marketers Association of Canada

Pollution Probe

Polysar Limited

Regional Municipality of Hamilton-Wentworth

Renfrew County Federation of Agriculture

Dr. Lois Smith*

Township of Oro

Tricil Ltd.

Tri-Form Business Systems

Andy Turnbull

United Co-Operatives of Ontario

Union of Ontario Indians

Bill Weaver*

Harold Whiting

2. Oral Submissions by Date and City

a) August 12, 1985 - Toronto
Tri-Form Business Systems

b) August 13, 1985 - St. Catharines

Petroleum Marketers Assocation of Canada
Harold Whiting
Ray Durham
Operation Clean Niagara
D & D Group
Niagara Federations of Agriculture
Hamilton-Wentworth Federation of Agriculture
Leslie Daniels representing:
a) Better Understanding, b) Local Council of Women, and c) Niagara Ecological Committee
Halton Federation of Agriculture
Marine Clean

c) August 15, 1985 - Toronto

Insurance Bureau of Canada
Canadian Manufacturers' Association
Union of Ontario Indians
Andy Turnbull
G. Heighington

d) August 16, 1985 - Thunder Bay

Insurance Brokers Association of Thunder Bay

e) August 19, 1985 - Chatham

Dow Chemical Canada Inc.
Polysar Ltd.
Middlesex County Federation of Agriculture
Evan Arnold
Kent County Federation of Agriculture
Bill Weaver

2. Oral Submissions by Date and City (Cont.)

f) August 21, 1985 - Kingston

Du Pont Canada Inc.
Home Energy Group
Renfrew County Federation of Agriculture
Lanark County Federation of Agriculture
Dr. Lois Smith
Pat Galt
Leeds Federation of Agriculture
Hastings County Federation of Agriculture
Dundas County Federation of Agriculture
Ken LeBlanc

g) August 23, 1985 - Sudbury

C-I-L Inc.
Ontario Trucking Association
East Nipissing & Parry Sound Federation of Agriculture
Inco Ltd.

h) August 26, 1985 - Toronto

Ontario Petroleum Association
Ontario Forest Industries Association
Canadian Environmental Law Association
Petroleum Marketers Association of Canada
Ontario Federation of Agriculture
Canadian Chemical Producers' Association
Canadian National Railways Company
Insurance Brokers Association of Ontario
Ontario Waste Management Association
Ontario Federation of Naturalists
Pollution Probe
Environmental Health Committee, Northern Toronto Health Area

i) August 27, 1985 - Toronto

Tricil Ltd.
City of Toronto, Public Works Department
Municipality of Metropolitan Toronto
Ontario Risk and Manufacturers Association

APPENDIX E: ADVISORY PANEL MEMBERS AND SUPPORT STAFF

Chairman:	Professor John G.W. Manzig
Panel Member:	Janette M. MacDonald
Panel Member:	Peter Armour
Executive Coordinator:	John Manuel, P.Eng.
Secretary:	Colleen Clark-Schwartz
Researcher:	Joseph Castrilli
Researcher:	David A. Scriven
Admin. Assist.	Beverley J. Kozak